

2001

# ILLINOIS

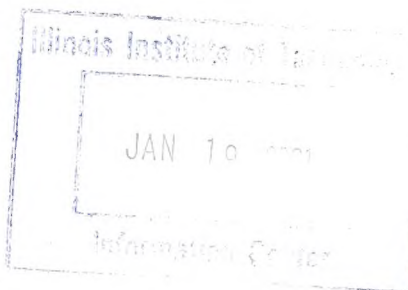
## REGISTER

RULES  
OF GOVERNMENTAL  
AGENCIES



Volume 25, Issue 02  
January 12, 2001

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EDITOR'S NOTE: Beginning with Issue 3, the Cumulative Index and Sections Affected Index will be printed weekly and included in each issue of the Illinois Register.





## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENTS

Removes outdated Sections related to horses conceived and foaled prior to effective date of law.

Clarifies qualifications for eligibility for the Early Arrival, New Purchase and Breed-Back foaled only programs and brings them into agreement with the statute.

Brings rules into agreement with statute concerning stallion owners' awards and racing at county fairs.

Quarter Horse

Establishes rules relating to the Illinois Racing Quarter Horse Breeder's Program.

Definitions of the following terms: Administrator, Breeder, Conceived, Department, Director, Filled, Foaled, Illinois Resident, Investigator, Quarter Horse, Standardbred Horse and Thoroughbred Horse.

Defines use of trust accounts to hold and disburse money.

Distribution of monies appropriated for the Quarter Horse Breeders Fund Program.

Stallion certification requirements and procedures, information required on applications and application deadlines.

Stallion breeding records, information required on applications and application deadlines.

Requirements for foal eligibility when transported fresh semen is used.

Foal eligibility requirements and procedures, information requirements for applications and application deadlines.

Eligibility requirements for horses foaled prior to the effective date of the legislation which created the Quarter Horse Breeders Fund Program.

County fair and State Fair quarter horse racing conditions.

Payment and disbursement of nominating, sustaining and starting fees for races sponsored by the Department of Agriculture.

6) Will this proposed rule replace an emergency rule in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed Amendments contain incorporations by reference? Yes

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENTS

9) Are there any other proposed Amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: Rule does not affect units of local government.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: A 45-day written comment period will begin on the day the notice of rulemaking appears in the Illinois Register. Please mail written comments on the proposed rulemaking to the attention of:

Linda Rhodes

Illinois Department of Agriculture

State Fairgrounds, P.O. Box 19281

Springfield IL 62794-9281

217/785-5713

217/785-4505 (fax)

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Race horse owners, race horse breeders and county fairs that conduct horse racing.

B) Reporting, bookkeeping or other procedures required for compliance: Since the quarter horse Section is new, there will be reporting, bookkeeping and other procedures required for those who choose to participate in the program.

C) Types of professional skills necessary for compliance: No Additional professional skills are needed.

13) Regulatory agenda on which this rulemaking was summarized: January 2000

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 8: AGRICULTURE AND ANIMALS

## CHAPTER 1: DEPARTMENT OF AGRICULTURE

## SUBCHAPTER 1: HORSE RACING AND BREEDING

## PART 290

STANDARDBREED, AND THOROUGHBRED AND QUARTER HORSE BREEDING AND RACING PROGRAMS, ILLINOIS

SUBPART A: RULES RELATING TO BOTH-THE ILLINOIS STANDARDBREED, AND THOROUGHBRED AND QUARTER HORSE BREEDING AND RACING PROGRAMS

## Section

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290.15 Trust Funds; Nominating, Sustaining and Entry Fees Starting-Funds  
290.20 Operating Plan and Official Budget Schedule-A; Standardbred, and Thoroughbred and Quarter Horse Breeders Fund Programs and Monies Distribution Schedule

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Before Offering Service Application-for-offering-or-standing-stallion-for-service

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290.77 Notification of Sale or Transfer of Ownership of Certified Stallion

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290.80 Stallion Qualification Procedures (Repealed)

290.85 Qualifications for Illinois Conceived and Foaled Standardbred Horses  
290.90 Certification-and Registration for Illinois Conceived and Foaled Horses

290.95 Standardbred Breeders Awards (Repealed)

290.100 Grandfather Rights of Standardbred Horses Registered Under the Illinois Harness Racing Act (Repealed)

290.105 Standardbred Racing at County Fairs or Other Locations  
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## DEPARTMENT OF AGRICULTURE

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290.170 Stallion Siring Foal Must Qualify in Order For Foal to be Eligible for Registration as an Illinois Conceived and Foaled Horse (Repealed)

290.175 Notification to-the-department if Certified licensed Stallion Leaves the State

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290.255 Stallion Eligibility Certificate

290.260 Qualifications for Illinois Conceived and Foaled Quarter Horses

290.265 Registration for Illinois Conceived and Foaled Horses

290.270 Quarter Horse Racing at County Fairs or Other Locations

290.275 Illinois Conceived and Foaled Quarter Horse Races at the Illinois State Fair and Du Quoin State Fair

290.280 Quarter Horse Racing at Illinois Pari-mutuel Racetracks

AUTHORITY: Implementing and authorized by Sections 30, 30.5 and 31 of the Illinois Horse Racing Act of 1975 [230 ILCS 5/30, 30.5 and 31].



## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENTS

SOURCE: Rules and Regulations Relating to the Illinois Standardbred and Thoroughbred Horse Breeding and Racing Programs, filed October 13, 1976, effective October 23, 1976; filed December 21, 1977, effective January 1, 1978; 3 Ill. Reg. 26, page 164, effective June 28, 1979; 4 Ill. Reg. 25, page 88, effective June 4, 1980; codified at 5 Ill. Reg. 10544; amended at 12 Ill. Reg. 14515, effective September 6, 1988; amended at 15 Ill. Reg. 5207, effective April 1, 1991; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: RULES RELATING TO BOTH THE  
ILLINOIS STANDARDBRED, AND THOROUGHBRED AND QUARTER  
HORSE BREEDING AND RACING PROGRAMS

## Section 290.10 Definitions

As used in these rules, unless otherwise required by the context, the singular form shall also impart the plural and vice versa, and the following terms shall be construed respectively to mean:

"Administrator" means an employee of the Department responsible for the administration of the Illinois Standardbred Breeders Program, and the Illinois Thoroughbred Breeders Program and Illinois Quarter Horse Breeders Program.

"Bred" - A horse is bred at the place of mating of sire and dam.

"Breeder" - In the Standardbred Breeders Program and the Quarter Horse Breeding Program, "breeder" means the owners of the mare (dam) at the time of conception. In the Thoroughbred Breeders Program, "breeder" means the owner of the mare (dam) at the time of foaling. "Breeder" means the owner of the mare (dam) at the time of foaling as far as the Thoroughbred Breeders Program is concerned. In the Standardbred Breeders Program, "breeder" means the owner of the mare (dam) at the time of conception.

"Conceived" - A horse is conceived at the place where the mare (dam) is bred.

"Department" or "Department of Agriculture" means the Department of Agriculture of the State of Illinois.

"Director" means the Director of the Department of Agriculture of the State of Illinois.

"Filed" - All official documents, reports, or similar forms are considered to be "filed" timely if they are either delivered to the Department on or before the date due or postmarked on or before the date due.

"Foaled" - A horse is foaled at its place of birth.

"Horse's Age" - The age of a horse is reckoned as beginning on the first day

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENTS

of January of the year in which he was foaled. (Standardbreds are subject to the United States Trotting Association's modified early foaling rule.)

"Illinois resident" means:

- a) An individual who is physically present in the State of Illinois with the intention to remain and is considered to be a resident by the Illinois Department of Revenue or Illinois Secretary of State.
- b) A partnership, joint venture, limited partnership or other syndicate or association shall qualify as an Illinois resident provided all of the individual members and/or beneficiaries qualify individually as residents of the State of Illinois. The Articles of Agreement of any one of these types of entities must contain a restriction that provides that the ownership or transfer of interest by any one of the persons a party to the agreement can only be made to a person who qualifies as an Illinois resident.
- c) In regard to the Standardbred Program: A corporation shall be considered an Illinois resident if:
  - A) it is incorporated in Illinois,
  - B) all incorporators, directors, officers, and stockholders qualify individually as residents of the State of Illinois, and
  - C) the bylaws and stock certificates of the corporation must contain a restrictive stock transfer agreement that provides for the ownership or transfer of the stock only to persons who qualify as an Illinois resident.
- 2) In regard to the Thoroughbred Program: A corporation shall be considered an Illinois resident if:
  - A) it is incorporated in Illinois and
  - B) it has been incorporated in the State of Illinois for 12 months.

"Investigator" means an employee of the Department who is authorized to conduct investigations for the Department relative to those Sections of the Horse Racing Act of 1975 which are under the jurisdiction of the Department of Agriculture and such other duties as assigned by the Director.

"Nominator" means the person in whose name a horse is entered for a race.

"Standardbred Horse" means a horse registered or eligible to be registered by

## DEPARTMENT OF AGRICULTURE

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the United States Trotting Association.

"Thoroughbred Horse" means a horse registered or eligible to be registered by the Jockey Club.

"Quarter Horse" means a horse registered or eligible to be registered by the American Quarter Horse Association.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.15 Trust Funds; Nominating, Sustaining and Entry Fees Starting Funds

a) All nominating, sustaining and starting fees for races promoted by the Department as set forth in Schedule A (see 8 Ill. Adm. Code Section 290-20) shall be paid for each horse nominated for a race to the Department of Agriculture by the date set for each type payment.

b) The sum of all payments made by an entrant to a race shall not exceed 2 percent of the total purse being awarded for such race.

c) Trust accounts shall be established by the Department Administrator as authorized by the Horse Racing Act of 1975 and Section 205-15.40-7 of the Civil Administrative Code [20 ILCS 205/205-15] to receive, hold and disburse monies derived from entrants payments.

d) Trust funds held by the Department shall be invested in interest bearing accounts and the interest accrued from such investments shall be used for the benefit of the entrants.

e) All nominating, sustaining and entry starting fee payments shall be paid as a part of the respective purse for such race.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.20 Operating Plan and Official Budget Schedule--A; Standardbred, and Thoroughbred and Quarter Horse Breeders Fund Programs and Monies Distribution Schedule

a) The Department shall prepare for each fiscal year operating plans and official budgets a program to encourage the breeding and racing in the State of standardbred and thoroughbred and quarter horses and shall provide for the distribution of monies appropriated for the Standardbred and Thoroughbred and Quarter Horse Breeders Fund Programs.

b) This schedule, including addenda or amendments, shall be the official program and monies distribution schedule for the Standardbred and Thoroughbred Breeders Fund Programs. The schedule shall be referred to as Schedule A and shall be kept on file in the Department.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENTS

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## SUBPART B: STANDARDBRED DIVISION

### Section 290.50 Stallion Certification Qualification Requirements

a) All standardbred stallions standing for service in Illinois must be certified registered annually with the Department for foals of such stallions to be eligible to be registered in the Illinois Standardbred Breeders Fund Program and to be eligible to race in races restricted limited to Illinois conceived conceived and foaled horses Foaled Horses.

b) No person shall knowingly prepare or cause to be prepared an application for certification registration containing false information. Any false information shall be grounds for denying an Illinois Stallion Eligibility Certificate and/or cancellation of an Illinois Stallion Eligibility Certificate.

c) No stallion can be certified registered as an Illinois stallion by a person who does not meet the residency requirement as set forth in the Act. To qualify as a stallion for Illinois Stallion Breeding. To be certified as an Illinois stallion:

1) the such stallion shall be owned by a resident of the State of Illinois and stand standing for service at and within the State of Illinois at the time of a foal's coit's conception; and

2) the such stallion must not stand for service at any place outside of the State of Illinois during that calendar year in which the foal coit is conceived; and

3) that the owners owner of the stallion must be, or must have been was for the 12 months prior, residents a resident of Illinois.

d) Semen from an Illinois certified stallion may be shipped for immediate use to other locations within the State, but cannot be shipped to locations outside the State of Illinois during the calendar year for which the stallion is certified.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.55 Certification of Stallion for First Time or Under New Ownership Before Offering Service Application--for--Offering--or--Standing--Stallion--for--Service

Any person who desires to stand a stallion for service shall, before standing or offering the stallion for service, certify the stallion with the Department and comply with this Part. Certification applies only to the owners at the time of application. If a certified stallion is sold to new owners, the stallion is no longer eligible for the program unless re-certified by the new owners.

Every person offering or standing any stallion for service shall, before



## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENTS

January 1 of every year in which such service will be offered, file with the Department a written application on forms provided by the Department, giving the following information:

- a) The name of the stallion;
- b) The sire and dam of the stallion;
- c) The place or places where the stallion stood for service during the previous year (if applicable);
- d) The place where the stallion will stand for service during the year for which the application is made;
- e) That the stallion is and will be owned by a resident of Illinois, and will be standing for service at and within the State of Illinois; and that such stallion will not stand for service at any place outside the State of Illinois during the calendar year, and that the owner of the stallion was for the twelve months prior a resident of the State of Illinois;
- f) Details concerning right of ownership, such as, a bill of sale, purchase price, contract or other document providing proof of ownership which must show any agreements concerning breeding rights, repurchase agreements, and other types of concessions.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 290.60 Renewal Application for Offering or Standing Stallion for Service New Owner of a Stallion Shall Qualify Stallion Before Offering Service

- a) Every person offering or standing any stallion for service shall, before January 1 of every year in which such service will be offered, file with the Department a written application, on forms provided by the Department, giving the following information:
  - 1) The name of the stallion.
  - 2) The names and addresses of the stallion owners.
  - 3) The names and addresses of lessee (if applicable).
  - 4) The sire and dam of the stallion.
  - 5) The places where the stallion stood for service during the previous year (if applicable).
  - 6) The place where the stallion will stand for service during the year for which the application is made.
  - 7) That the stallion is and will be owned by a resident of Illinois, and will be standing for service within the State of Illinois, and will not stand for service at any place outside the State of Illinois during the calendar year for which application is being made; and that the owners of the stallion were, for the 12 months prior, residents of the State of Illinois.
  - 8) Details concerning right of ownership, such as contracts or other documents, must show any agreements concerning breeding rights, repurchase agreements, and other types of concessions.
- b) The Department shall impose monetary penalties, in accordance with 230

## DEPARTMENT OF AGRICULTURE

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ILCS 5/40, for late filing of a renewal application for offering or standing stallion for service.

Any person who becomes the owner of a stallion after January 1 of any year and desires to stand such stallion for service shall, before standing or offering the stallion for service during the year in which acquired, qualify the stallion with the Department and comply with all rules as provided.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 290.65 Breeding Record of Stallion -- Record List of Mares Bred

- a) Every person offering or standing any stallion for service shall maintain a complete breeding record of the stallion and all mares bred to such stallion, including:
    - 1) the name of the mare,
    - 2) the dam and site of the mare,
    - 23) the names, name and addresses address, including zip code, of the owner or owners of the mare,
    - 34) the first and last dates on which the stallion was bred to the mare,
    - 4) if the mare was inseminated by transported semen, any and all dates semen was shipped must be reported,
    - 5) if the mare was pasture bred, first and last possible breeding dates shall be indicated.
    - 57 the place where the stallion was standing for service at the time of such breeding, and
    - 67 the person or persons who were in charge of the stallion at the time of such service.
  - b) A copy of the fully completed Record United States Prototyping Association list of Mares Bred which is required for submission by September 1 of each year must be filed with also submitted to the Department by September 1 of each year. For mares bred after September 1, immediate notification to the Department is required.
  - c) The Department shall impose monetary penalties, in accordance with 230 ILCS 5/40, for incomplete and/or late filing of the Record of Mares Bred.
- (Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 290.67 Requirements for Transported Fresh Semen of a Certified Stallion

- a) Semen from an Illinois-certified stallion may be transported within the State for the purpose of inseminating a mare or mares within the State but cannot be transported outside the State.
- b) The mare owners or their authorized representative must file a



## DEPARTMENT OF AGRICULTURE

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Transported Fresh Semen Report with the Department, in a timely manner, indicating the insemination dates, the insemination site, a description of the mare, the ownership of the mare, and the name of the person who performed the insemination. Subsequent inseminations utilizing transported fresh semen must be reported as required by this subsection.

- c) The mare must be in the State at the time of conception, and such fact will be verified by a Department employee.
- d) The stallion owners or their authorized representative must indicate on the Record of Mares Bred (see Section 290.65) all mares artificially inseminated with transported fresh semen.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.70 Stallion Siring Foal Must Qualify In Order For Foal to be Eligible for Registration as an Illinois Conceived and Foaled Horse (Repealed)

No foal shall be eligible for registration as an Illinois-Conceived and Foaled Horse under the provisions of the Illinois Standardbred Breeders' Fund Program unless at the time of such conception the owner of the stallion siring such foal has met the requirements of the "Illinois Horse-Racing Act of 1975" (Ill. Rev. Stat., 1979, Ch. 67, par. 37-31) and the rules relating to the qualification of such stallion (6-111-Adm. Code-290).

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.75 Notification to the Department if Certified Licensed Stallion Leaves the State

The owners owner or their his authorized representative must give immediate notification to the Department if the stallion leaves the location State in the year for which where he is certified licensed. The stallion may not be used for breeding purposes outside the State of Illinois during the calendar year for which certified.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.77 Notification of Sale or Transfer of Ownership of Certified Stallion

- a) The Department must receive notification of transfer of ownership of a certified stallion within 10 days after the sale or transfer.
- b) If the new owners are Illinois residents and desire to certify the stallion for eligibility in the Illinois Standardbred Breeders Fund Program, the owners or their authorized representative shall, before

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENTS

standing or offering the stallion for service, file an Application for Stallion Registration on forms provided by the Department.

c) If the stallion is transferred to someone other than an Illinois resident, and the stallion had previously serviced mares during that calendar year, the stallion may not be used for breeding purposes outside the State of Illinois during the remainder of the calendar year for which the stallion was certified as an Illinois stallion.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.78 Stallion Eligibility Certificate

- a) Certified stallions must be identified at the reported standing location by a Department investigator.
- b) Upon certification of a stallion by the Department, an Illinois Stallion Eligibility Certificate shall be issued and will be delivered to the reported standing location.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.80 Stallion Qualification Procedures (Repealed)

#### Stallion Qualification Procedures:

- a) To qualify a stallion, the owner is required to complete an annual Application for Stallion Registration and forward it to the Illinois Department of Agriculture, State Fairgrounds, Springfield, Illinois 62706.
- b) The issuance of an Illinois Stallion Eligibility Certificate by the Department is contingent on the stallion being inspected and identified by a Department investigator.
- c) In the event of a sale or transfer of ownership of a standardbred stallion qualified with the Department, the transfer of ownership shall be executed on the back of the Illinois Stallion Eligibility Certificate for such stallion and the endorsed Certificate forwarded to the Department.
- d) If the new owner is an Illinois resident and desires to qualify the stallion for eligibility in the Illinois Standardbred Breeders Fund Program, then the owner must submit an application for a Stallion Eligibility Certificate accompanied by a copy of the Bill of Sale or other legal document of transfer of ownership and meet the requirements of 6-111-Adm. Code-Section 290.66.
- e) Display of Illinois Stallion Eligibility Certificate. An Illinois Stallion Eligibility Certificate for each qualified stallion must be displayed in a conspicuous place on the premises in which the stallion is stabled.

## DEPARTMENT OF AGRICULTURE

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(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.85 Qualifications for Illinois Conceived and Foaled Standardbred Horses

A horse, to be qualified for the Illinois Standardbred Breeders Fund Program and for races restricted limited to Illinois conceived Conceived and foaled horses, Foaled Horses must meet the following requirements:

- a) An Illinois conceived and foaled horse is a foal born in this State and sired by a certified Illinois stallion standing for service within this State at the time of such foal's conception; and
- a) ~~The owner of the mare (dam) must complete and return the Mare Status Report to the Department at least 30 days before the anticipated date of foaling.~~
- b) ~~The Mare Status Report must indicate the piece where the mare will foal in this State and the person who will be responsible for the mare at the time of foaling.~~
- bc) A mare (dam) must be in the State a total of at least 30 consecutive days with such time to include the foaling date. Prior to foaling and/or remain in the State at least 30 days at the time of foaling and must meet the following statutory requirements:

- 1) ~~An Illinois conceived and foaled horse is a foal dropped in this State from a mare in this State and sired by a qualified Illinois stallion standing for service at and within this State at the time of such foaling conception; which stallion did not stand for service at any place outside this State during the calendar year in which such foal was conceived.~~
- d) ~~The Mare Status Report must indicate if mare is to be bred back to an Illinois stallion or to a stallion standing at service outside the State of Illinois.~~

\*Quoted from Ill. Rev. Stat.: 1979, Ch. 8, para. 37-39.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.90 Certification and Registration for Illinois Conceived and Foaled Horses

- a) An application for foal registration a Foal Eligibility Certificate for an Illinois conceived Conceived and foaled Foaled Standardbred Standardbred foal Foal must be filed with the Department within 10 days after foaling. Such application shall be made on forms provided by the Department. The forms shall be completed by the owners owner of the foal or their his authorized representative and such person shall provide all the information required. b) The mare and foal must remain in the State until it has they have been inspected, identified or until written notice that the Foal Application has been accepted and

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the foal registration is issued by the Department, and certified by a Department investigator.

- 2) ~~If the mare is to be bred to a stallion standing for service outside the State of Illinois, then the owner or his authorized representative shall immediately, after birth of a foal, notify the Department and request that the foal be inspected, identified and certified by a Department investigator.~~
- 3) ~~When the foal has been certified by a Department investigator, the mare and foal may leave the State.~~
- b) Procedures for Registration of Illinois Conceived and Foaled Standardbreds.

- 1) The owners owner of the foal, or their authorized representative, shall complete an application for foal registration a Foal Eligibility Certificate showing the name of the brood mare (dam), the name of the sire, the date of foaling, the color, the sex and markings of the foal, and such other information required by the Department concerning the foal.
- 2) If the foal has met all the requirements for registration, a the Department may issue an official Foal Eligibility Certificate will be issued, for such foal.

- A) ~~The Foal Eligibility Certificate shall be the official registration for such Illinois Conceived and Foaled Standardbred Horse.~~
- B) ~~If the original Foal Eligibility Certificate is lost or destroyed, the owner may make application to the Department for a duplicate Foal Eligibility Certificate for such horse.~~
- C) ~~The Department may issue a duplicate Foal Eligibility Certificate for such horse if all requirements are met.~~

- 3) In the event of a sale or transfer of ownership of a standardbred foal registered with the Department, the transfer of ownership shall be executed on the front back of the Foal Eligibility Certificate for such foal and the endorsed Certificate Certificate forwarded to the Department. A new Certificate Certificate will be issued to the new owners owner.

- c) The Department shall impose monetary penalties, in accordance with 230 ILCS 5/40, for the late filing of an application for foal registration.

- e) ~~All Illinois Conceived and Foaled Standardbreds foaled prior to the effective date of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1979, Ch. 8, par. 37-39) who have birth certificates filed with the State Fair Agency and who were inspected, identified and certified by the State Fair Agency Gilt Stake investigator, may be issued a Foal Eligibility Certificate for Illinois Conceived and Foaled Standardbred Horses.~~

- d) ~~In the case of a standardbred horse that was conceived and foaled in Illinois but for whom a birth certificate and/or an application for certification was not filed with the State Fair Agency, the present owner may make application to the Department for registration of such~~

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horse--the applicant shall meet all the requirements as set forth in these rules concerning the registration of an Illinois-bred foal and Standardbred horse and in addition must provide evidence to the Department and its investigators to assure that the horse qualifies for registration as an Illinois-bred foal and Standardbred horse.

- e) A standardbred horse born prior to January 17, 1976, in order to be registered as an Illinois-bred foal and Standardbred horse must be registered by the Department by January 17, 1977.
- f) A foal that was conceived in Illinois prior to January 17, 1976, whose sire was duly registered under the requirements of the Illinois Harness Racing Act as amended under the rules of the State Fair Agency and was foaled in Illinois after January 17, 1976, may be upon application for registration under the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1979, Ch. 8, par. 37-317) registered as an Illinois-bred foal and Standardbred horse.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 290.95 Standardbred Breeders Awards (Repealed)

- a) Standardbred breeders awards are limited to breeders of Illinois-bred foals and Standardbred horses as defined in the Act (Ill. Rev. Stat. 1970, Ch. 8, par. 37-317) being a breeder is the owner of a mare at the time of conception.

- b) A breeder cannot receive awards unless the foal (horse) is properly registered as required by the Act as an Illinois-bred foal and Standardbred horse.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 290.100 Grandfather Rights of Standardbred Horses Registered Under the Illinois Harness Racing Act (Repealed)

Illinois-bred foals and Standardbred horses that were properly registered under the provisions of the Illinois Harness Racing Act as amended, will be eligible to participate in the Illinois Standardbred Breeders Fund Program and other programs pursuant to the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1979, Ch. 8, par. 37-317).

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 290.105 Standardbred Racing at County Fairs or Other Locations

- a) A county fair or other location in cooperation with a Standardbred

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Coit Association or as an individual county fair, upon approval of the Department, may conduct harness races for two and three year-old Illinois-bred foals and Standardbred horses in compliance with the conditions hereafter set forth in this Section and in accordance with such other conditions as deemed necessary from time to time by the Department. A Coit Association to be qualified to conduct races in the Illinois Standardbred Breeders Fund Program shall be restricted to conducting races at county fairs and the Illinois State Fair and for Illinois-bred foals and Standardbred horses only.

- b) 1) A Coit Association or individual county fair must mail to the Department and all owners of entries a complete list of all eligible horses within 30 days after the nominating and sustaining payments date.
- 2) This list will be printed on standard 8 1/2 x 11 paper and shall list the owners alphabetically. Horses shall be listed under the appropriate age, race and gait. The list shall also indicate the sex of the horse and the fair(s) to which the horse is nominated.

- c) Any other conditions or payments not provided for in these rules must have approval of the Department.

- bd) The President and secretary, or his/her authorized representative, of each qualified Coit Association or individual county fair claiming benefits of any distribution from the Illinois Standardbred Breeders Fund shall file with the Department, within 7 days after the last racing day of a county fair, a document an affidavit stating that Department rules have been complied with the amount of purses contributed by the county fair or other location, the names and addresses of those owners who received Illinois Standardbred Breeders Fund purse money, the amount each horse owner received, a statement of the effect that all of the horses entered in the races were nominated in the Illinois Standardbred Breeders Fund Program as provided for by the Department, and other information the Department may require.

- ce) All races held at county fairs which receive funds from the Illinois Standardbred Breeders Fund must be conducted in accordance with the rules of the United States Trotting Association unless otherwise modified by rules of the Department. Any deviation from the rules of the Department or the U.S. Trotting Association Rules and Regulations not authorized by the Department shall be grounds for denying a Coit Association or a county fair funds from the Illinois Standardbred Breeders Fund.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 290.110 Illinois-bred foals and Standardbred Races at the Illinois State Fair and Du Quoin State Fair



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- a) The Department will conduct annually during the Illinois State Fair at least a 5-day racing program as set forth in the Illinois Horse Racing Act of 1975 [230 ILCS 5/31] ~~{Ill.-Rev.-Stat.-1989, Ch.-87, par.-37-31.}~~
- 1) The program shall include at least the following races limited to Illinois conceived and foaled horses:

- A) A two year old trot and pace, and filly division ~~Free--and Pace--and-Filly-Division of each;~~
- B) A three year old trot and pace, and filly division ~~Free--and Pace--and-Filly-Division of each;~~
- C) An aged ~~{four-, five- and six-year-olds}~~ trot and pace, and mare division ~~Free--and--Pace--and--Mare-Division of each.~~ Quoted from (Section 31 of the Illinois Horse Racing Act of 1975 [230 ILCS 5/31]) ~~{Ill.-Rev.-Stat.-1989, Ch.-87, par.-37-31.}~~

- b) All standardbred races held at the Illinois State Fair or Du Quoin State Fair which receive funds from the Illinois Standardbred Breeders Fund shall be conducted in accordance with the rules of the United States Trotting Association (750 Michigan Avenue, Columbus, Ohio 43215; 1990), unless otherwise modified by rule of the Department. This incorporation by reference does not include any later amendments or editions. Any deviation from the rules of the Department or the U.S. Trotting Association rules not authorized by the Department shall be grounds for denying funds from the Illinois Standardbred Breeders Fund.

- c) ~~Who--qualify--to--race--at--the--Illinois--State--Fair--in--races--for--Illinois--Conceived--and--Foaled--Horses;--a--horse--shall--meet--the--following requirements:~~

- 1) ~~Be--registered--by--the--Department--as--an--Illinois--Conceived--and--Foaled--Standardbred--Horse;~~

- 2) ~~Whenever--the--basic--purse--are--equal--for--the--"open"--and--"filly"--races;--a--filly--may--not--enter--the--"open"--race;~~

- cd) Nominating -- Sustaining and Entry Starting Fees. All nominating, sustaining and entry starting fees for races sponsored by the Department of Agriculture through the Illinois Standardbred Breeders Fund shall be paid to the Department, or its authorized agent except for those races specifically designated otherwise in Schedule A (See 8 Ill.-Adm.-Code--Section--290-207. 1) The dates and amounts of these payments shall be as set forth in Schedule A (See 8 Ill.-Adm.-Code--Section--290-207). 2) All fees received from these payments shall be kept by the Department in accounts as set forth in 30 ILCS 105/5.26a for Ill.-Rev.-Stat.-1989, Chapter 127, paragraph 111-26a, to be used for the benefit of entrants in specific races. These monies shall be paid out as a part of the purse for each respective race.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART C: THOROUGHBRED DIVISION

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Section 290.150 Stallion Certification ~~Qualification~~ Requirements

- a) All thoroughbred stallions standing for service in Illinois must be certified ~~registered~~ annually with the Department for foals of such stallions to be registered in the Illinois Thoroughbred Breeders Fund program and to be eligible to race in races restricted limited to Illinois conceived and foaled horses ~~foaled horses~~.
- b) No person shall knowingly prepare or cause to be prepared an application for certification ~~an--Illinois--Stallion--Eligibility Certificate~~ containing false information. Any false information shall be grounds for denying an Illinois Stallion Eligibility Certificate registration and/or cancellation of an Illinois Stallion Eligibility Certificate.

- c) The stallion shall be standing for service within the State of Illinois at the time of a foal's conception, and such stallion must not stand for service at any place outside of the State of Illinois during that calendar year in which the foal is conceived.

- e) ~~No--stallion--can--be--registered--as--an--Illinois--stallion--by--a--person--who--does--not--meet--the--residency--requirement--as--set--forth--in--the--Act. "No--qualify--a--stallion--for--Illinois--breeding--not--less--than--50%--of--such--stallion--shall--be--owned--by--a--resident--of--the--State--of--Illinois--and--standing--for--service--within--the--State--of--Illinois--at--the--time--of--a--foal's--conception--and--such--stallion--must--not--stand--for--service--at--any--place--outside--the--State--of--Illinois--during--that--calendar--year--in--which--the--foal--is--conceived--and--that--the--Illinois--owner--of--the--stallion--was--for--12--months--prior--a--resident--of--Illinois."~~

~~-----Section 30 of the Illinois Horse Racing Act of 1975 (Ill.-Rev.-Stat.-1979, Chapter-87, Par.-37-30):~~

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 290.155 Certification of Stallion for First Time or Under New Ownership Before Offering Service ~~Application for Offering or Standing Stallion for Service~~

Any person who desires to stand a stallion for service shall, before standing or offering the stallion for service, certify the stallion with the Department and comply with this Part. Certification applies only to the owners at the time of application. If a certified stallion is sold to new owners, the stallion is no longer eligible for the program unless re-certified by the new owners.

Every ~~person--offering--or--standing--any--stallion--for--service--shall--before--January--1--of--every--year--in--which--such--service--will--be--offered--file--with--the--Department--a--written--application--on--forms--provided--by--the--Department--giving--the--following--information:~~

- a) The name of the stallion;
- b) The owner/owners and address of the stallion;

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- c) The place where the stallion stood for service during the previous year.
- d) The place where the stallion will stand for service during the year for which the application is made.
- e) That the stallion is and will be owned by a resident of Illinois, and will be standing for service at and within the State of Illinois, and that such stallion will not stand for service at any place outside the State of Illinois during the calendar year, and that the owner of the stallion was for the twelve months prior a resident of the State of Illinois.
- f) Details concerning right of ownership, such as a bill of sale, contract or other document providing proof of ownership, which must show any agreements concerning breeding rights, repurchase agreements, and other types of concessions.
- g) Submission of official certificate of registration from Jockey Club.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 290.160 Renewal Application for Offering or Standing Stallion for Service New Owner of a Stallion Shall Qualify Stallion Before Offering Service

- a) Every person offering or standing any stallion for service shall, before January 1 of every year in which such service will be offered, file with the Department a written application on forms provided by the Department giving the following information:
- 1) The name of the stallion.
  - 2) The names and addresses of the stallion owners.
  - 3) The names and addresses of lessee (if applicable).
  - 4) The places where the stallion stood for service during the previous year (if applicable).
  - 5) The place where the stallion will stand for service during the year for which the application is made.
  - 6) That the stallion will be standing for service within the State of Illinois and will not stand for service at any place outside the State of Illinois during the calendar year for which application is being made.
- b) Annual statement of ownership, including names and addresses of owners and percentage of ownership.
- c) Submission of a photocopy of the official certificate of registration from the Jockey Club.
- d) The Department shall impose monetary penalties, in accordance with 230 ILCS 5/40, for late filing of a renewal application for offering or standing stallion for service.

Any person who becomes the owner of a stallion after January 1 of any year and desires to stand such stallion for service shall, before standing or offering the stallion for service during the year in which acquired, qualify the stallion with the Department and comply with all rules as provided.

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(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 290.165 Breeding Record of Stallion -- Record Report of Mares Bred

- a) Every person offering or standing any stallion for service shall maintain a complete breeding record of the stallion and all mares bred to such stallion, including:

- 1) the name of the mare,
  - 2) the mare's Jockey Club registration number, the dam and sire of the mare,
  - 3) the names name and addresses address, including zip code, of the owner or owners of the mare,
  - 4) the first and last dates on which the stallion was bred to the mare, and
  - 5) if the mare was pasture bred, first and last possible breeding dates shall be indicated.
- 5) the place where the stallion was standing for service at the time of such breeding, and
- 6) the person or persons who were in charge of the stallion at the time of such service.

- b) A copy of the fully completed Record Jockey Club Report of Mares Bred which is required for submission by September 1 of each year, must be filed with also submitted to the Department by September 1 of each year. For mares bred after September 1, immediate notification to the Department is required.

- c) The Department shall impose monetary penalties, in accordance with 230 ILCS 5/40, for incomplete and/or late filing of the Record of Mares Bred.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 290.170 Stallion Siring Foal Must Qualify In Order For Foal to be Eligible for Registration as an Illinois Conceived and Foaled Horse (Repealed)

No foal shall be eligible for registration as an Illinois Conceived and Foaled Horse under the provisions of the Illinois Thoroughbred Breeders' Fund Program unless at the time of such conception the owner of the stallion string such foal has met the requirements of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat., 1979, Ch. 87, par. 37-38) and the rules relating to the qualification of such stallion (8 Ill. Adm. Code Part 290).

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 290.175 Notification to the Department if Certified Licensed Stallion Leaves the State

Certificate--for--such--stallion--and--the--endorsed--Certificate--forwarded  
to--the--Department--  
d) If the new owner is an Illinois resident and desires to qualify the  
stallion for eligibility in the Illinois Thoroughbred Breeders Fund  
Program, then the owner must submit an application for a Stallion  
Eligibility Certificate accompanied by a copy of the Bill of Sale and  
meet the requirements of 8 Ill. Adm. Code Section 290.169.  
e) The Illinois Stallion Eligibility Certificate shall be available for  
inspection on the premises where the stallion stands.  
(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 290.185 Qualifications for Illinois Conceived and Foaled Thoroughbred Horses

A horse, to be qualified for the Illinois Thoroughbred Breeders Fund Program and for races restricted limited to Illinois conceived and foaled horses, Foaled Horses must meet the following requirements:  
a) An Illinois conceived and foaled horse is a foal born in this State and sired by a certified Illinois stallion standing for service within this State at the time of such foal's conception; and  
b) The owner of the mare (dam) must complete and return the Mare Status Report to the Department at least 30 days before the anticipated date of foaling;  
c) The Mare Status Report must indicate the place where the mare will foal in this State and the person who will be responsible for the mare at the time of foaling;  
d) A mare (dam) must be in the State a total of at least 30 consecutive days with such time to include the foaling date, prior to foaling and/or remain in the State at least 30 days at the time of foaling and must meet the following statutory requirements:  
An Illinois conceived and foaled horse is a foal dropped in this State from a mare in this State and sired by an Illinois qualified stallion standing for service at and within this State at the time of such foal's conception; which stallion did not stand for service at any place outside this State during the calendar year in which such foal was conceived.  
e) The Mare Status Report must indicate if the mare is to be bred back to an Illinois stallion or to a stallion standing at service outside the State of Illinois.  
-----Quoted from Ill. Rev. Stat. 1979, Ch. 87, para. 37-30  
(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 290.190 Certification and Registration for Illinois Conceived and Foaled Horses

The owners owner or their his authorized representative must give immediate notification to the Department if the stallion leaves the location where he is certified State in the year for which licensed.  
(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 290.177 Notification of Sale or Transfer of Ownership of Certified Stallion

a) The Department must receive notification of transfer of ownership of a certified stallion within 10 days after the sale or transfer.  
b) If the new owners desire to certify the stallion for eligibility in the Illinois Thoroughbred Breeders Fund Program, the owners or their authorized representative shall, before standing or offering the stallion for service, file an Application for Stallion Certification on forms provided by the Department.  
c) If the stallion had previously serviced mares during that calendar year, the stallion may not be used for breeding purposes outside the State of Illinois during the remainder of the calendar year for which the stallion was certified as an Illinois stallion.  
(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 290.178 Stallion Eligibility Certificate

a) Certified stallions must be identified at the reported standing location by a Department investigator.  
b) Upon certification of a stallion by the Department, an Illinois Stallion Eligibility Certificate shall be issued and will be delivered to the reported standing location.  
(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 290.180 Stallion Qualification Procedures (Repealed)

a) To qualify a stallion, the owner is required to complete the annual Application for Stallion Eligibility Certificate and forward it to the Illinois Department of Agriculture, State Fairgrounds, Springfield, Illinois 62767.  
b) The issuance of an Illinois Stallion Eligibility Certificate by the Department is contingent on the stallion being inspected and identified by a Department investigator.  
c) In the event of a sale or transfer of ownership of a thoroughbred stallion qualified with the Department, the transfer of ownership shall be executed on the back of the Illinois Stallion Eligibility



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- a) An application for foal registration for of an Illinois conceived conceived and foaled Thoroughbred foal Foaled Thoroughbred--Foal must be filed with the Department within 10 days after foaling. Such application shall be made on forms provided by the Department. The forms shall be completed by the owners owner of the foal or their his authorized representative and such person shall provide all the information required. If the mare-and foal must remain in the State until it has they have been inspected, identified or until written notice that the Foal Application has been accepted and the foal registration is issued by the Department, and--certified-by--a Department--investigator--if--the--mare--is--to--be--bred--to--a--station standing-for--service--outside--the--State--of--Illinois--the--owner--or--his authorized--representative--shall--immediately--after--birth--of--a--foal, notify--the--Department--and--request--that--the--foal--be--inspected, identified--and--certified--by--a--Department--investigator.
- 2) When the foal has been certified by a Department investigator the mare-and foal may leave the State.
- b) Procedures Procedure for Registration of Illinois Conceived and Foaled Thoroughbreds.

- 1) The owners owner of the foal, or their authorized representative, shall complete an application for foal registration showing the name of the brood mare (dam), the name of the sire, the date of foaling, the color, the sex and markings of the foal, and such other information required by the Department concerning the foal.
- 2) To complete the official registration of an Illinois conceived conceived and foaled horse Foaled-Horse, the owners or their authorized representative owner must forward the Jockey Club Certificate by registered mail to the Department. If the horse has met all of the requirements for registration, the Department shall affix its official seal shall be affixed on the face of the Jockey Club Certificate, which shall include the Illinois Department's registration number for such horse, and return the certificate shall be returned to the owner within 10 days from the date of receipt.

A) This certification of the Jockey Club Certificate will be the official registration certificate for the Illinois Thoroughbred Conceived and Foaled Program. The certified Jockey Club Certificate shall be returned to the owner of the horse by registered mail.

B) If the Jockey Club Certificate is lost or destroyed or replaced, the duplicate Jockey Club Certificate for such horse must be recertified by the Department to be valid for the Illinois Conceived and Foaled Program.

c) The Department shall impose monetary penalties, in accordance with 230 ILCS 5/40, for the late filing of an application for foal registration.

e) Att--Illinois--Conceived--and--Foaled--Thoroughbreds--foaled--prior--to--the effective--date--of--the--Illinois--Horse--Racing--Act--of--1975--(Ill. Rev.

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- Stat.--1979,--Ch. 9, par. 37-38) who have had birth certificates filed with the Illinois Racing Board and who were inspected, identified and certified by Illinois Racing Board investigators may be registered as Illinois Conceived and Foaled Thoroughbreds.
- d) In the case of a Thoroughbred horse that was conceived and foaled in Illinois but for whom a birth certificate and/or an application for certification was not filed with the Illinois Racing Board, the present owner may make application to the Department for registration of such horse. The applicant shall meet all the requirements as set forth in 8-11-Adm--Code Section 290-190(b) and in addition must provide evidence to the Department and the investigator to assure that the horse qualifies for registration as an Illinois Conceived and Foaled Thoroughbred Horse.
- e) A Thoroughbred horse born or conceived prior to January 1, 1976 eligible to be registered as an Illinois Conceived and Foaled Thoroughbred Horse, must be registered by the Department by January 1, 1977.
- f) In the case of a Thoroughbred foal which was conceived prior to January 1, 1977, and was foaled after January 1, 1976, and the foal met the requirements of the Illinois Racing Board rules and regulations, such foal shall be eligible to be registered under the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1979, Ch. 9, par. 37-38):

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 290.195 Qualifications for Illinois Foaled Thoroughbred Horses

a) A horse, foal to be qualified for the Illinois Thoroughbred Breeders Fund Early Arrival program and for races limited to Illinois foaled horses, Foaled Horses must meet the following requirements:

1a) The owners owner of the mare (dam) or their authorized representative must complete a Mare Status Report and file it with the Department on or before no later than December 1 of the year the foal is conceived.

b) The Mare Status Report must indicate:

- 1) name and Jockey Club registration number of mare;
  - 2) mare owner's name and address;
  - 3) mare's last breeding date;
  - 4) station servicing mare;
  - 5) location of the mare on December 31 of the year of conception; and
  - 6) the place where the mare will foal in this State and the person who will be responsible for the mare at the time of foaling.
- 2e) The mare (dam) must be in the State on or before December 1 of the year the foal is conceived and remain continuously in this State until the foal is born dropped. In addition to this

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statutory--requirements--a-mare-must-be-in-the-State-at-least-30 days prior to foaling and/or for a period of 30 days at the time of foaling.

- d) The--Mare--Status-Report-must-indicate-if-mare-is-to-be-bred-back-to-a qualified-illinois-station-or-to-a-station-not-duly-qualified-as-an illinois--station--standing-in-illinois-or-outside-the-State-of illinois.

- b) A horse, to be qualified for the Illinois Thoroughbred Breeders Fund New Purchase Program and for races limited to Illinois foaled horses, must meet the following requirements:

- 1) The mare (dam) must be in the State before February 1, and the owners of the mare, or their authorized representative, must complete a Mare Status Report and file it with the Department no later than February 1 of the year of foaling.

- 2) The mare (dam) must have been purchased at a public auction and must be 100% Illinois owned.

- 3) The mare (dam) must foal in Illinois.

- c) A horse, to be qualified for the Illinois Thoroughbred Breeders Fund Breed-Back Program and for races limited to Illinois foaled horses, must meet the following requirements:

- 1) The mare (dam) must be in the State on or before March 1, and the owners of the mare, or their authorized representative, must complete a Mare Status Report and file it with the Department on or before March 1 of the year of foaling.

- 2) The mare (dam) must foal in Illinois.

- 3) The mare (dam) must remain in Illinois for 30 days after foaling and must be bred back during the year of foaling to an Illinois certified stallion and none other.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.200 Certification--and Registration for Illinois Foaled Thoroughbred Horses

- a) An application for foal registration for an Illinois foaled thoroughbred foal foaled-Thoroughbred-Foal must be filed with the Department within 10 days after foaling. Such application shall be made on forms provided by the Department. The forms shall be completed by the owners owner of the foal or their authorized representative and such person shall provide all the information required. 1) The mare--and foal must remain in the State until it has they-have been inspected, identified or until written notice that the Foal Application has been accepted and the foal registration is issued, and certified-by-a-Department-investigator.

- 2) When--the--foal--has-been-certified-by-a-Department-investigator the-mare-and-foal-may-leave-the-State.

- b) Procedures procedure for Registration of Illinois Foaled

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Thoroughbreds.

- 1) The owners owner of the foal, or their authorized representative, shall complete an application for foal registration showing the name of the brood mare (dam), the name of the sire, the date of foaling, the color, the sex and markings of the foal, and such other information required by the Department concerning the foal.

- 2) To complete the official registration of an Illinois foaled horse Foaled-Horse, the owners or their authorized representative owner must forward the Jockey Club Certificate by registered mail to the Department. If the horse has met all the requirements for registration, the Department-shall-affix-its official seal shall be affixed on the face of the Jockey Club Certificate, which shall include the Illinois Department's registration number for such horse, and return the certificate shall be returned to the owner within 10 days from the date of receipt.

- A) This certification of the Jockey Club Certificate will be the official registration certificate for the Illinois Foaled Thoroughbred Program. The certified Jockey Club Certificate shall be returned to the owner of the horse by registered mail.

- B) If the Jockey Club Certificate is lost or destroyed or replaced, the duplicate Jockey Club Certificate for such horse must be recertified by the Department to be valid for the Illinois Foaled Thoroughbred Program.

- c) The Department shall impose monetary penalties, in accordance with 230 ILCS 5/40, for the late filing of an application for foal registration.

- e) An-illinois-Foaled-Thoroughbred-foaled-prior-to-the-effective-date--of the-illinois-Horse-Racing-Act-of-1975--(Ill-Rev-Stat-1979-Ch-9-par 37-40)--who-has-had-a-birth-certificate-filed-with-the-illinois-Racing Board-and-who-was-inspected,identified-and-certified-by-an-illinois Racing-Board--investigator--may--be--registered-as-an-illinois-Foaled Thoroughbred.

- d) In-the-case-of-a-thoroughbred-horse-who-was-foaled-in-illinois-but-for whom-a-birth-certificate-and/or-an-application-for--registration-was not-filed-with-the-illinois-Racing-Board, the present-owner-may-make application-to-the-Department-of-Agriculture-for-registration-of--such horse--the-applicant-shall-meet-all-the-requirements-as-set-forth-in-8 Ill-Adm--Code--Section-290.200(b)--and-in-addition-must-provide evidence-to-the-Department-and-the-investigator--to--assure--that--the horse--qualifies--for--registration-as-an-illinois-Foaled-Thoroughbred Horse.

- e) A-thoroughbred-horse-born-prior-to-January-17--1976--eligible--to--be registered-as-an-illinois-Foaled-Thoroughbred-Horse-must-be-registered by-the-Department-by-January-17-1977.

- f) In-the-case-of-a-thoroughbred-foal-which-was-conceived-prior-to January-17-1976, and-was-foaled-after-January-17-1976--and--the-foal met--the-requirements--of--the-illinois-Racing-Board-rules, such-foal

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~~shall be eligible to be registered under the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1979, Ch. 87, par. 37-307).~~

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.205 Grandfather Rights of Thoroughbred Horses Registered Under the Illinois Horse Racing Act (Repealed)

~~Illinois--Conceived--and--Foaled--Thoroughbred--Horses--and--Illinois--Foaled Thoroughbred Horses--that were properly registered under the provisions--of--the Illinois--Horse--Racing--Act--as amended--will be eligible to participate in the Illinois Thoroughbred Breeders Fund Program and other programs pursuant to--the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1979, Ch. 87, par. 37-307).~~

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.210 Thoroughbred Stallion Owners Awards

a) Thoroughbred stallion owners awards are limited to the sires of registered Illinois conceived conceived and foaled horses that were conceived before May 30, 1995 Foaled Horses.

b) The owner of a thoroughbred stallion is eligible to participate in the stallion owners awards program by:

- 1) Qualifying foal must be registered as an Illinois conceived and foaled thoroughbred with the Illinois Department of Agriculture.
- 2) Qualifying foal must win a race other than a claiming race at a pari-mutuel track in Illinois with a total of ~~all--purse--money offered at--\$7,500--or--more.~~
- 3) Stallion must not stand or be offered for service outside the State of Illinois during the calendar year in which the qualified foal wins an eligible race.

c) The stallion owner is defined as the owner of record of the stallion at the time of conception of the qualifying horse. Stallion owners awards will be paid to such owners.

d) ~~Thoroughbred stallions who do not meet the above conditions and--rules are ineligible to participate in the Stallion Owners Awards money.~~

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 290.215 Illinois Conceived and Foaled Thoroughbred Racing at Races; County Fairs

Illinois Thoroughbred Breeders Fund Program--

- a) The Illinois Horse Racing Act of 1975 provides \$75,000 \$50,000 annually for purses to be distributed to county fairs that provide for

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the running of races during each county fair. These races will be open to thoroughbreds that are properly registered as Illinois conceived conceived and foaled foaled with the Department.

- b) The conditions of the races shall be developed by the county fair association and foaled foaled with the Department, in--consultation--with--the Illinois Racing Board--and with the advice and assistance of the Illinois Thoroughbred Breeders Fund Advisory Board.

- c) County fair associations desiring to participate in this program shall file an application for participation with the Department on or before February 15th each year. Such applications are available from the Department. Information as to location, date, track surface, and number of permanent horse stalls available, and other information, must be given.

- d) ~~the Department may, at its discretion, deny allocation--of--funds--for Illinois--Conceived--and--Foaled--Races--to--county--fairs, if when--the--surface--of--the--track--is--not--in--suitable--condition--for thoroughbred--racing;~~

- 2) ~~When the type of inside and outside track rails or the lack--of inside--or--outside--rails--or--any--part--thereof--constitute--a--hazard impairing--the--safety--of--thoroughbreds--jockeys--and--general public;~~

- e) ~~County fair associations shall not schedule or advertise--these--races until--officially--notified--by--the--Department--of--its--approval--of--the races--to--be--offered--and--the--amount--of--funds--allocated;~~

- df) The Department may at any time order the cancellation of a race or races if funds have been conditionally allocated to a fair association and the conditions have not been fulfilled prior to opening day of the fair. Any violation of the Department rules shall be just cause for denying distribution of fund monies to the county fair and/or the money winning horse owners.

- eg) The purse distribution shall be as follows: 50% to the winner; 25% to second; 15% to third; and 10% to fourth.

- fh) The president and secretary of each county fair association claiming the benefit of any distribution from the Illinois Thoroughbred Breeders Fund shall file with the Department, within ~~seven--(7) days~~ after the last racing day of a county fair, 2 two official programs, an affidavit stating that Department rules have been complied with, and other information including the amount of purses put up by the county fair, the names and addresses of those owners who are to share in the total purse and the amount in which they are to share, and any other information the Department may require.

- if) ~~The--Department--investigator--assigned--to--each--fair--shall--act--as presiding--steward--and--horse--identifier--with--the--authority--to--enforce the--Department--rules--for--county--fair--racing--and--to--act--on--any situation--not--covered--by--those--rules.~~

- gj) The fair association shall appoint a Racing Secretary, 3 three placing judges, starter and a timer as the officials to conduct the races. ~~if These the above named officials shall be appointed at least 2 two days~~



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prior to the date of the races ~~race(s)~~. The list of those appointed officials must be submitted to the Department ~~investigators--assigned to--the--fair~~ no later than ~~twenty-four~~ 24 hours before the running of the ~~race(s)~~.

2) ~~the Department investigator assigned to each fair--may--aid--but shall not substitute for any appointed official.~~

k) ~~The--Department investigator assigned to each fair--shall supervise and regulate all functions pertaining to the conduct of the racing and--he shall enforce the rules of the Department.~~

h) The Department investigator may ~~shall~~ identify each horse starting in a race by means of description on the Jockey Club Certificate and verify Illinois conceived and foaled registration.

2) ~~immediately, after the completion of the program of races at each county--fair,--the Department investigator shall submit a written report to the Department on all matters pertaining to the conduct of races, officiating, condition of the track and appointments.~~

i) It shall be the duty of the ~~3~~ three judges to conduct the races and their decision shall be final in all matters pertaining to the running of the races, including the placing of horses horse. All questions pertaining directly to racing arising during the program of races at county fairs shall be determined by the judges and the Department investigator assigned to the fair.

m) ~~the Racing Secretary of the fair--association--is--the--only--person authorized to receive entries and declarations.~~

j) It shall be the duty of the Racing Secretary to ascertain that the owner of a horse in whose name the said horse is entered is the last owner of record on the Jockey Club Certificate. The Racing Secretary shall not card any race or races unless there is a minimum of ~~five~~ separate owner interests represented in a race.

ko) The Racing Secretary shall record the Illinois Conceived and Foaled Certificate number or registration number of each Illinois conceived Conceived and foaled horse Foaled Horse competing in the races and furnish this information to the Department.

p) ~~Illinois--Conceived--and--Foaled--Thoroughbreds--that--were--properly registered--by--the--Illinois Racing Board under the provisions of the Illinois Horse Racing Act will be eligible to these races--as--now provided--by--the Department under the provisions of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1987, ch. 87, par. 37-30)--and--the Illinois Thoroughbred Breeders Fund Program.~~

q) ~~All entries must be made in writing on Official Entry blanks furnished by the fair association--and--all requested information--must--be furnished--at the time of entry--Entries may be made by telephone--if promptly confirmed by the Racing Secretary--and--will be valid--or recognized--if--the name of the horse so entered has been printed on the official program.~~

l) No horse shall be eligible to be entered in a race that is receiving money from the Illinois Thoroughbred Breeders Fund unless the horse has been duly registered as an Illinois Conceived and Foaled

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Thoroughbred. The Illinois registration number shall be recorded on the entry blank at the time an entry for a race is submitted to the Racing Secretary.

s) ~~All entries shall be closed at the advertised time.~~

mt) In the event that the number of entries to any race is in excess of the number of horses that may, because of track limitations, be permitted to start, the starters for the race shall be determined by lot in the presence of those making entries, and the post position shall be in the order in which the starters they are drawn. They and the same method shall be used in determining the starters and post positions in case any race is divided or split.

u) ~~At the closing time--for filling entries for the succeeding day--the horses entered shall be drawn by lots for post positions--and--a typewritten list of the horses so drawn--into--the--race--shall immediately be posted on the bulletin board in the Racing Secretary's office for inspection of the owners and trainers.~~

v) ~~The entries of the races for the succeeding day shall become official--thirty--minutes--after--such--posting--and--no--changes thereafter shall be made because of any omissions or inaccuracies.~~

w) ~~All horses must be stabled on the fair grounds no later than two hours prior to the post time for the first race of the day.~~

x) ~~Jockeys must wear protective helmets.~~

y) ~~No jockey shall be permitted to ride who is presently under suspension or ruled off in the State of Illinois--or--in--any--other--State--the Department investigator shall check the eligibility of each jockey.~~

z) ~~The jockeys must be attired in racing silks.~~

aa) ~~No whips or spurs permitted in two year old races.~~

bb) ~~The track shall be in suitable condition for thoroughbred racing as determined by the Racing Secretary and the Department of Agriculture investigator--There shall be an adequate cushion provided on the racing strip.~~

cc) ~~A mechanical starting gate shall be used at the start of all races and a horse shall not be considered a starter unless he leaves the starting gate with the field.~~

dd) ~~Sufficient time shall be allowed for post parades and warm ups. A minimum of ten minutes shall elapse between the time the horses enter the track and arrive at the starting gate.~~

ee) ~~No horse shall be permitted to start that has not been fully identified. The Illinois Conceived and Foaled Certificate--and--the Jockey Club Certificate--or--the Illinois Certified Jockey Club Certificate--must be on file with the Racing Secretary.~~

ff) ~~There shall be a minimum of five (5) separate owner interests--stating in each race.~~

gg) ~~No horse is qualified to run in any race unless he is duly entered for that race.~~

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## SUBPART D: QUARTER HORSE DIVISION

**Section 290.220 Stallion Certification Requirements**

- a) All stallions standing for service in Illinois must be certified annually with the Department for foals of such stallions to be registered in the Illinois Quarter Horse Breeders Fund Program and to be eligible to race in races restricted to Illinois conceived and foaled horses.
- b) No person shall knowingly prepare or cause to be prepared an application for certification containing false information. Any false information shall be grounds for denying an Illinois Stallion Eligibility Certificate and/or cancellation of an Illinois Stallion Eligibility Certificate.
- c) The stallion shall be standing for service within the State of Illinois at the time of a foal's conception, and such stallion must not stand for service at any place outside of the State of Illinois during that calendar year in which the foal is conceived.
- d) Semen from an Illinois certified stallion may be shipped for immediate use to other locations provided the stallion does not stand for service at any place outside the State of Illinois during the calendar year for which the stallion is certified.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 290.225 Certification of Stallion for First Time or Under New Ownership Before Offering Service**

Any person who desires to stand a stallion for service shall, before standing or offering the stallion for service, certify the stallion with the Department and comply with this Part. Certification applies only to the owners at the time of application. If a certified stallion is sold to new owners, the stallion is no longer eligible for the program unless re-certified by the new owners.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 290.230 Renewal Application for Offering or Standing Stallion for Service**

Every person offering or standing any stallion for service shall, before January 1 of every year in which such service will be offered, file with the Department a written application, on forms provided by the Department, giving the following information:

- a) the name of the stallion,
- b) the names and addresses of the stallion owners,

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- c) the names and addresses of lessee (if applicable),
- d) the sire and dam of the stallion,
- e) the places where the stallion stood for service during the previous year (if applicable),
- f) the place where the stallion will stand for service during the year for which the application is made, and
- g) that the stallion will be standing for service within the State of Illinois, and that such stallion will not stand for service at any place outside the State of Illinois during the calendar year for which application is being made.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 290.235 Breeding Record of Stallion -- Record of Mares Bred**

- a) Every person offering or standing any stallion for service shall maintain a complete breeding record of the stallion and all mares bred to such stallion, including:

- 1) the name of the mare,
- 2) the names and addresses, including zip code, of the owner or owners of the mare,
- 3) the first and last dates on which the stallion was bred to the mare,
- 4) if the mare was inseminated by transported semen, any and all dates semen was shipped must be reported,
- 5) if the mare was pasture bred, first and last possible breeding dates shall be indicated.

- b) A fully completed Record of Mares Bred must be filed with the Department by September 1 of each year. For mares bred after September 1, immediate notification to the Department is required.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 290.240 Requirements for Transported Fresh Semen of a Certified Stallion**

- a) The mare owners or their authorized representative must file a Transported Fresh Semen Report with the Department, in a timely manner, indicating the insemination dates, the insemination site, a description of the mare, the ownership of the mare, and the name of the person who performed the insemination. Subsequent inseminations utilizing transported fresh semen must be reported as required by this subsection.

- b) The mare must be in the State at the time of conception, and such fact will be verified by a Department employee.

- c) The stallion owners or their authorized representative must indicate

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on the Record of Mares Bred (see Section 290.235) all mares artificially inseminated with transported fresh semen.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 290.245 Notification if Certified Stallion Leaves the State**

The owners or their authorized representative must give immediate notification to the Department if the stallion leaves the location where he is certified. The stallion may not be used for breeding purposes outside the State of Illinois during the calendar year for which certified.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 290.250 Notification of Sale or Transfer of Ownership of Certified Stallion**

a) The Department must receive notification of transfer of ownership of a certified stallion within 10 days after the sale or transfer.

b) If the new owners desire to certify the stallion for eligibility in the Illinois Racing Quarter Horse Breeder's Fund Program, the owners or their authorized representative shall, before standing or offering the stallion for service, file an Application for Stallion Certification on forms provided by the Department.

c) If the stallion had previously serviced mares during that calendar year, the stallion may not be used for breeding purposes outside the State of Illinois during the remainder of the calendar year for which the stallion was certified as an Illinois stallion.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 290.255 Stallion Eligibility Certificate**

a) Certified stallions must be identified at the reported standing location by a Department investigator.

b) Upon certification of a stallion by the Department, an Illinois Stallion Eligibility Certificate shall be issued and will be delivered to the reported standing location.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 290.260 Qualifications for Illinois Conceived and Foaled Quarter Horses**

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A horse, to be qualified for the Illinois Quarter Horse Breeders Fund Program and for races restricted to Illinois conceived and foaled horses, must meet the following requirements:

a) An Illinois conceived and foaled horse is a foal born in this State from a mare in this State and sired by a certified Illinois stallion standing for service within this State at the time of such foal's conception.

b) A mare (dam) must be in the State a total of 30 consecutive days with such time to include the foaling date.

c) Foals produced by embryo transfer procedures will be eligible for the program provided the conception of the donor mare occurred within the State, the birth of the foal occurred within the State, the owners of the mare or their authorized representative provide all information concerning markings, identity and location of the recipient mare, and all applicable requirements of the American Quarter Horse Association are met.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 290.265 Registration for Illinois Conceived and Foaled Horses**

a) An application for foal registration for an Illinois conceived and foaled quarter horse foal must be filed with the Department within 10 days after foaling. Such application shall be made on forms provided by the Department. The forms shall be completed by the owners of the foal or their authorized representative and such person shall provide all the information required. The foal must remain in the State until it has been identified or until written notice that the foal Application has been accepted and the foal registration is issued by the Department.

b) Procedures for Registration of Illinois Conceived and Foaled Quarter Horses.

1) The owners of the foal, or their authorized representative, shall complete an application for foal registration showing the name of the mare (dam), the name of the sire, the date of foaling, the color, the sex and markings of the foal, and such other information required by the Department concerning the foal.

2) If the foal has met all the requirements for registration, a Foal Eligibility Certificate will be issued.

3) In the event of a sale or transfer of ownership of a quarter horse foal registered with the Department, the transfer of ownership shall be executed on the front of the Foal Eligibility Certificate for such foal and the endorsed certificate forwarded to the Department. A new certificate will be issued to the new owners.

c) All Illinois conceived and foaled quarter horses foaled prior to the effective date of the Illinois Horse Racing Act Amendment of 1999 who



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are inspected, identified and certified and may be issued a Foal Eligibility Certificate for Illinois conceived and foaled quarter horses.

- d) In the case of a quarter horse that was conceived and foaled in Illinois, but for whom a birth certificate and/or an application for registration was not filed with the Department, the present owners may make application to the Department for registration of the horse. The applicant shall meet all the requirements of this Part concerning the registration of an Illinois conceived and foaled quarter horse, and in addition must provide evidence to assure that the horse qualifies for registration as an Illinois conceived and foaled quarter horse.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 290.270 Quarter Horse Racing at County Fairs or Other Locations

- a) A county fair or other location, upon approval of the Department, may conduct quarter horse races for Illinois conceived and foaled quarter horses in compliance with the conditions established in this Section and in accordance with such other conditions as deemed necessary from time to time by the Department.

- b) The president and secretary, or his/her authorized representative, claiming benefits of any distribution from the Illinois Quarter Horse Breeders Fund shall file with the Department, within 7 days after the last racing day, a document stating the amount of purses contributed by the county fair or other location, the names and addresses of those owners who received Illinois Quarter Horse Breeders Fund purse money, the amount each horse owner received and other information the Department may require.

- c) All races held that receive funds from the Illinois Quarter Horse Breeders Fund must be conducted in accordance with the rules of the American Quarter Horse Association, unless otherwise modified by rules of the Department. Any deviation from the rules of the Department or the American Quarter Horse Association Rules and Regulations not authorized by the Department shall be grounds for denying funds from the Illinois Quarter Horse Breeders Fund.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 290.275 Illinois Conceived and Foaled Quarter Horse Races at the Illinois State Fair and Du Quoin State Fair

- a) All quarter horse races held at the Illinois State Fair and the Du Quoin State Fair which receive funds from the Illinois Quarter Horse Breeders Fund shall be conducted in accordance with the rules of the American Quarter Horse Association unless otherwise modified by rule

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of the Department or the Illinois Racing Board. This incorporation by reference does not include any later amendments or editions. Any deviation from the rules of the Department or the American Quarter Horse Association rules not authorized by the Department shall be grounds for denying funds from the Illinois Quarter Horse Breeders Fund.

- b) To qualify to race at the Illinois State Fair or Du Quoin State Fair in races for Illinois conceived and foaled quarter horses, a horse must be registered by the Department as an Illinois conceived and foaled quarter horse.

- c) Nominating -- Sustaining and Entry Fees. All nominating, sustaining and entry fees for races sponsored by the Department of Agriculture through the Illinois Quarter Horse Breeders Fund shall be paid to the Department or its authorized agent. All fees received from these payments shall be kept by the Department to be used for the benefit of entrants in specific races. These monies shall be paid out as a part of the purse for each respective race.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 290.280 Quarter Horse Racing at Illinois Pari-mutuel Racetracks

With the advice and assistance of the Illinois Racing Quarter Horse Breeders Fund Advisory Board, a budget may be established each year to provide money for:

- a) stakes races for Illinois registered quarter horses; and  
b) owners' awards for Illinois registered quarter horses finishing first, second, third, fourth and fifth in open races conducted at Illinois pari-mutuel racetracks.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Livestock Waste Regulations

2) Code citation: 35 Ill. Adm. Code 506

3) Section Numbers: Proposed Action:

506.101	Amend
506.103	Amend
506.105	Repeal
506.106	Amend
506.201	Amend
506.202	Amend
506.203	Repeal
506.205	Amend
506.206	Amend
506.207	Repeal
506.208	Repeal
506.209	Repeal
506.301	Repeal
506.302	Repeal
506.303	Repeal
506.304	Repeal
506.305	Repeal
506.306	Repeal
506.307	Repeal
506.309	Repeal
506.310	Repeal
506.311	Repeal
506.312	Repeal
506.313	Repeal
506.314	Repeal
506.401	Repeal
506.501	Repeal
506.601	Repeal
506.602	Repeal
506.603	Repeal
506.604	Repeal
506.605	Repeal
506.606	Repeal
506.607	Repeal
506.608	Repeal
506.610	Repeal
506.611	Repeal
506.612	Repeal
506.613	Repeal
506.614	Repeal
506.615	Repeal
506.620	Repeal
506.701	Repeal

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506.702	Repeal
506.703	Repeal
506.704	Repeal
506.Appendix A	Repeal
506.Illustration A	Repeal
506.Illustration B	Repeal

4) Statutory authority: Authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/27] and Section 55 of the Livestock Management Facilities Act [510 ILCS 77/55] and implementing the Livestock Management Facilities Act [510 ILCS 77].

5) Complete description of the subjects and issues involved: This rulemaking amends and repeals Sections of Part 506 now replaced by the Department of Agriculture's rules at 8 Ill. Adm. Code 900.

6) Will these proposed amendments replace emergency amendments currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of statewide policy objectives: The purpose of this rulemaking is to make the Board's rules consistent with the Department of Agriculture's rules at 8 Ill. Adm. Code 900.

11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for at least 45 days after the date of publication in the *Illinois Register*. Comments should reference Docket R01-18 and be addressed to:

Clerk's Office  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking affects persons engaged in

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livestock operations now governed by the Department's rules (8 Ill. Adm. Code 900).

B) Reporting, bookkeeping or other procedures required for compliance:  
The proposed amendments to Part 506 do not require reporting, bookkeeping or other procedures. Requirements are now located at 8 Ill. Adm. Code 900.

C) Types of professional skills necessary for compliance: No professional skills should be required to comply with the existing Board rules and proposed amendments to Part 506.

13) Regulatory Agenda on which this rulemaking was summarized: July 2000

The full text of the proposed rules begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE E: AGRICULTURE RELATED POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD

## PART 506

## LIVESTOCK WASTE REGULATIONS

## SUBPART A: GENERAL PROVISIONS

Section
506.101 Applicability
506.102 Severability
506.103 Definitions
506.104 Incorporations by Reference
506.105 Recordkeeping (Repealed)
506.106 Alternatives, Modifications and Waivers

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## Section

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## Section

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## SUBPART F: FINANCIAL RESPONSIBILITY

## Section

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## Section

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**AUTHORITY:** Authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/27] and Section 55 of the Livestock Management Facilities Act and implementing the Livestock Management Facilities Act [510 ILCS 77].

**SOURCE:** Adopted in R97-15(A) at 21 Ill. Reg. 6851, effective May 20, 1997; amended in R97-15(B) at 22 Ill. Reg. 20605, effective November 12, 1998;

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amended in R01-18 at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**NOTE:** In this Part, superscript numbers or letters are denoted by parentheses; subscript are denoted by brackets; and SUM means the summation series or sigma function as used in mathematics.

## SUBPART A: GENERAL PROVISIONS

Section 506.101 Applicability

This Subpart applies to 35 Ill. Adm. Code 506. The applicability of Subpart B, Standards for Livestock Waste Lagoons, is set forth at Section 506.201 of this Part. ~~The applicability of Subpart C7-Waste-Management-Plan, is set--forth--at Section--506.302--of--this--Part.---The--applicability--of--Subpart-B7-Certified Livestock-Manager,--is--set--forth--at--Section--506.401--of--this--Part.---The applicability--of--Subpart-P7-Financial-Responsibility, is set--forth--at--Section 506.601--of--this--Part.---The applicability--of--Subpart-G7-Setback97-is--set--forth~~ at Section 506.701 of this Part.

**BOARD NOTE:** Upon the effective date of this Part, the emergency rules at 35 Ill. Adm. Code 505, Livestock Waste Regulations, will no longer apply. This Part will take the place of those emergency rules.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 506.103 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5] or the Livestock Management Facilities Act [510 ILCS 77]. For the purposes of this Part, the terms included herein shall have the following meanings:

~~"Agency"---means---the---Illinois---Environmental-Protection-Agency- [510 ILCS 77/10.5]~~

~~"Animal feeding operation" means a feeding operation as defined in the Illinois Environmental Protection Act and the rules promulgated under that Act concerning agriculture related pollution. [510 ILCS 77/10.7]~~

~~"Animal unit" means a unit of measurement for any animal feeding operation calculated as follows:~~

~~Brood cows and slaughter and feeder cattle multiplied by 1.0.~~

~~Milking dairy cows multiplied by 1.4.~~

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Young dairy stock multiplied by 0.6.

Swine weighing over 55 pounds multiplied by 0.4.

Swine weighing under 55 pounds multiplied by 0.03.

Sheep, lambs, or goats multiplied by 0.1.

Horses multiplied by 2.0.

Turkeys multiplied by 0.02.

Laying hens or broilers multiplied by 0.005.

Laying hens or broilers multiplied by 0.01 (if the facility has continuous overflow watering).

Laying hens or broilers multiplied by 0.03 (if the facility has a liquid manure handling system).

Ducks multiplied by 0.02. [510 ILCS 77/10.10]

For species of animals in an animal feeding operation not specifically listed in this definition, the animal unit factor shall be determined by dividing the average mature animal weight by 1,000. The average mature animal weight shall be determined by the Department with guidance from the University of Illinois Cooperative Extension Service.

"Aquifer material" means sandstone that is five feet or more in thickness, or fractured carbonate that is ten feet or more in thickness; or, sand, gravel, or sand and gravel, as defined herein, such that there is at least two feet or more present within any five foot section of a soil boring performed in accordance with Section 506.202 of this Part.

"Certified--livestock--manager"--means--a--person--that--has--been--duly certified--by--the--Department--as--an--operator--of--a--livestock--waste handling--facility. [510-15CS-77/10-15]

"Department" means the Illinois Department of Agriculture. [510 ILCS 77/10.20]

"Farm--residence"--means--any--residence--on--a--farm--owned--or--occupied--by the--farm--owners--operators--tenants--or--seasonal--or--year--round--hired workers--For--purposes--of--this--definition--a--"farm"--is--the--land--buildings--and--machinery--used--in--the--commercial--production--of--farm products--and--"farm--products"--are--those--plants--and--animals--and--their

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products--which--are--produced--or--raised--for--commercial--purposes--and include--but--are--not--limited--to--forages--and--sod--crops--grains--and--feed crops--dairy--and--dairy--products--poultry--and--poultry--products--livestock--fruits--vegetables--flowers--seeds--grasses--trees--fish--honey--and--other--similar--products--or--any--other--plant--animal--or--plant or--animal--product--which--supplies--people--with--feed--fiber--or fur. [510-15CS-77/10-23]

"Gravel" or "Sand and gravel" means unconsolidated materials that contain a matrix (particles of two millimeters or less) that is consistent with the definition of "sand" and particles larger than two millimeters in size.

"Lagoon" or "Barthen livestock waste lagoon" means any excavated, diked, or walled structure or combination of structures designed for biological stabilization and storage of livestock wastes. A lagoon does not include structures such as manufactured slurry storage structures or pits under buildings as defined in rules under the Environmental Protection Act concerning agriculture related pollution. [510 ILCS 77/10.25]

"Licensed Professional Engineer" means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering. [415 ILCS 5/57.2]

"Licensed Professional Geologist" means an individual who is licensed under the laws of the State of Illinois to engage in the practice of professional geology in Illinois. [225 ILCS 745/15]

"Livestock management facility" means any animal feeding operation, livestock shelter, or on-farm milking and accompanying milk-handling area. Two or more livestock management facilities under common ownership, where the facilities are not separated by a minimum distance of 1/4 mile, and that share a common livestock waste handling facility shall be considered a single livestock management facility. Livestock management facilities at educational institutions, livestock pasture operations, facilities where animals are housed on a temporary basis such as county and state fairs, livestock shows, race tracks, and horse breeding and foaling farms, and market holding facilities are not subject to the Livestock Management Facilities Act or the requirements of this Part. [510 ILCS 77/10.30]

"Livestock waste" means livestock excreta and associated losses, bedding, wash waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, and other materials polluted by livestock. [510 ILCS 77/10.35]

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"Non-farm--residence"--means--any--residence--which--is--not--a--farm residence. [510 ILCS 77/10.47]

"Occupied residence"--means--a house--or--other--type--of--shelter--that--is intended--or--used--for--human--occupancy--and--has--been--occupied--by--humans for--more--than--a--total--of--six--months--in--the--last--two--years--at--that location.---For--the--purposes--of--this--definition--intended--or--used--for human--occupancy--means--running--water--and--sanitation--are--provided within--the--residence.

"Owner or operator" means any person who owns, leases, controls, or supervises a livestock management facility or livestock waste-handling facility.. [510 ILCS 77/10.50]

"Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, State agency, or any other legal entity or their legal representative, agent, or assigns. [510 ILCS 77/10.55]

"Placed in service" means the placement of livestock waste in a livestock waste lagoon upon the completion of construction or modification in accordance with the requirements of this Part.

"Populated area"--means--any--area--where--at--least--10--inhabited--non-farm residences--are--located--or--where--at--least--50--persons--frequent--a--common place--of--assembly--or--a--non-farm--business--at--least--once--per--week. [510 ILCS 77/10.60] The existence of a populated area shall be determined by identifying the area around the livestock management or livestock waste-handling facility delineated by a distance equal to the applicable setback distance and identifying the number of residences or the existence of a non-farm business or the existence of a common place of assembly within that area.---For--the--purpose--of--setback requirements, common places of assembly or non-farm businesses include but are not limited to churches, hospitals, schools, day-care centers, manufacturing companies, land managed for recreational or conservation purposes, museums, camps, parks, retail and wholesale facilities, and shopping centers.---A common place of assembly or a non-farm business includes places that operate less than 52 weeks per year, such as schools with seasonal vacation periods and businesses or other places which experience seasonal shutdowns, and parks, camps, and recreational areas which experience seasonal shutdowns or reduced attendance during a portion of the calendar year provided that such places are frequented by at least 50 persons at least once per week during the portions of the year when seasonal shutdowns or reductions in attendance do not occur.

"Residence"--means--a--house--or--other--structure--including--all attachments--to--the--house--or--structure--which--is--used--as--a--place--of

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"Livestock waste handling facility" means individually or collectively those immovable constructions or devices, except sewers, used for collecting, pumping, treating, or disposing of livestock waste or for the recovery of by-products from the livestock waste. Two or more livestock waste handling facilities under common ownership and where the facilities are not separated by a minimum distance of 1/4 mile shall be considered a single livestock waste handling facility. [510 ILCS 77/10.40] Livestock waste handling facilities at educational institutions, livestock pasture operations, facilities where animals are housed on a temporary basis, such as county and state fairs, livestock shows, race tracks, and horse breeding and foaling farms, and market holding facilities are not subject to the Livestock Management Facilities Act or the requirements of this Part.

"Maintained" means, with reference to a livestock waste lagoon, that the livestock waste lagoon is inspected (including but not limited to inspection for burrow holes, trees and woody vegetation, proper freeboard, erosion, settling of berm, berm top integrity, leaks, and seepage) and preventive action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances.

"Modified" means structural changes to a lagoon that increase its volumetric capacity. [510 ILCS 77/10.43]

"New facility" means a livestock management facility or a livestock waste handling facility the construction or expansion of which is commenced on or after May 21, 1996 (the effective date of the Livestock Management Facilities Act). Expanding a facility where the fixed capital cost of the new components constructed within a 2-year period does not exceed 50% of the fixed capital cost of a comparable entirely new facility shall not be deemed a new facility as used in the Livestock Management Facilities Act. [510 ILCS 77/10.45] For facilities that have ceased operation on or after July 13, 1999, commencement of operations at a facility that has livestock shelters left intact and that has been operated as a livestock management facility for 4 consecutive months at any time within the previous 10 years shall not be considered a new or expanded livestock management or waste handling facility [510 ILCS 77/13(k)]. For facilities that have ceased operation prior to July 13, 1999, commencement of operations at a facility that has livestock shelters left intact and that has been operated as a livestock management facility or livestock waste handling facility for 4 consecutive months at any time with the previous 10 years shall not be considered a new or expanded livestock management or waste handling facility.



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~~human-habitation-~~

"Sand" means unconsolidated materials, where 70% or more of the particles are of size 0.06 millimeters to 2.00 millimeters, and which according to the USDA soil texture classification scheme includes soil textures of sand, and loamy sand, and portions of sandy loam and sandy clay loam.

~~"Serviced" means, with reference to a livestock waste lagoon, that corrective action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances, including, but not limited to, removal or repair of burrow holes, trees and woody vegetation, freeboard level, erosion, settling of berm, berm top maintenance, leaks, and seepage.~~

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.105 Recordkeeping (Repealed)

~~a) The Department shall maintain a file for all facilities registering or otherwise filing documents with the Department under these regulations.~~

~~b) The file shall contain all registration materials, along with all supporting data and justifications, records of Department certification and determinations, groundwater monitoring results (if required), waste management plans (if required), and any other information submitted to the Department by the owner or operator of a facility.~~

~~c) Copies of materials in the file for a registered facility shall be available for public inspection.~~

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.106 Alternatives, Modifications and Waivers

a) All requests for alternatives, modifications, and waivers to these regulations, where allowed by Section 15(a) and (e) of the Act [510 ICS 77(15)(a), (e)] or this Part (Sections 506.202(d), 506.204(h), 506.205(f), 506.206(j), 596-209-079) shall be made in writing to the Department. Construction may not begin or continue until the request for alternative, modification, or waiver is granted.

b) Each request for an alternative, modification, or waiver shall contain a certification from a Licensed Professional Engineer or Licensed Professional Geologist, as relevant, that the grant of the modification is at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management

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facility as the stated requirements or that the alternative or waiver is at least as protective as the stated requirements.

c) The Department shall notify the applicant in writing of its determination within 30 days after receipt of the request for an alternative, modification, or waiver. To grant the requested alternative, modification, or waiver, the Department must determine that the modification is at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the stated requirements or that the alternative or waiver is at least as protective as the stated requirements.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: STANDARDS FOR LIVESTOCK WASTE LAGOONS

## Section 506.201 Applicability

a) This Subpart applies to any lagoon that is new or modified and has not been placed in service as of the effective date of this Part.

b) For the purposes of this Subpart the number of animal units at a livestock management facility is the maximum design capacity of the livestock management facility.

~~c) In addition, a lagoon registered and certified pursuant to the emergency rules adopted in R97-14 at 20-111, Reg. 14903, effective October 31, 1996 and the emergency rules adopted in R97-14 at 21-111, Reg. 4313, effective March 31, 1997, shall be considered as registered and certified pursuant to this Subpart.~~

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.202 Site Investigation

a) The owner or operator of a new or modified livestock waste lagoon shall conduct a site investigation in accordance with the requirements of this Section to determine if aquifer material is present (or not present) within 50 feet of the planned bottom of the lagoon.

b) The owner or operator shall perform one or more soil borings which shall be located within the final lagoon area or within 20 feet of the final exterior berm toe. The boring shall be performed to determine the presence of aquifer material as follows:

- 1) The soil boring shall extend to a depth that includes 50 feet from the bottom of lagoon native soil or to bedrock;
- 2) If bedrock is encountered, additional soil borings may be necessary to verify the presence of aquifer material;
- 3) Continuous samples shall be recovered from each soil boring to ensure that no gaps occur in the sample column; and

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- 4) Upon completion, the boring(s) shall be properly abandoned and sealed pursuant to the Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.120.
- c) If the Department determines that additional soil borings are necessary to ensure the protection of the groundwater, surface water and the structural integrity of the livestock waste management facility, the Department shall require additional soil borings.
- d) As an alternative to performing the soil boring(s) required under subsection (b) or (c) of this Section, the owner or operator of a livestock waste lagoon may propose to the Department to utilize alternative information sources. The Department shall evaluate the proposal; shall determine whether the alternative information source will result in a site investigation that will be at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as would have resulted from data resulting from soil borings; and shall notify the owner or operator of the Department's finding.
- e) The site investigation in accordance with subsection (b), (c) or (d) of this Section shall be conducted under the direction of a Licensed Professional Engineer or Licensed Professional Geologist. Upon completion of the site investigation as required under subsection (b), (c) or (d) of this Section, the supervising Licensed Professional Engineer or Licensed Professional Geologist shall certify that the site investigation meets all the applicable requirements of this Section, and whether aquifer material shall be considered present (or not present) within 50 feet of the planned bottom of the lagoon in accordance with Section 506.203 of this Part. Such certification shall include all supporting data and justification.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.203 Registration (Repealed)

- a) Prior to new construction or modification of any earthen livestock waste lagoon after the effective date of this Part, such earthen livestock waste lagoon shall be registered by the owner or operator with the Department on a form provided by the Department in accordance with the requirements of this Section. Lagoons constructed prior to the effective date of this Part may register with the Department at no charge. (510-156S-77/15(b))
- b) The registration form, accompanied by a \$50 fee, shall include the following:
- 1) Name(s) and address(es) of the owner and operator who are responsible for the livestock waste lagoon;
  - 2) General location of lagoon;
  - 3) Design construction plans and specifications (including a lagoon plot plan with dimensions and elevations);

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- 4) Specific location information (noted on a facility site map or the lagoon plot plan):
- A) The location and distance to the nearest private or public potable well;
  - B) The location and distance to the closest occupied private residence (other than any occupied by the owner or operator);
  - C) The location and distance to the nearest stream;
  - B) The location and distance to the nearest populated area;
  - B) The location and distance to the nearest abandoned or plugged well, drainage well or injection well; and
  - F) The location of any subsurface drainage lines within 100 feet of the lagoon;
- 5) Anticipated beginning and ending dates of lagoon construction;
- 6) Type of livestock and number of animal units;
- 7) A certification by the supervising licensed professional engineer or licensed professional geologist, accompanied by supporting justification and data, certifying that the site investigation meets all the applicable requirements of Section 506.202 of this Part; whether aquifer material is considered present (or not present) within 50 feet of the planned bottom of the lagoon; and where applicable, a copy of the synthetic liner manufacturer's compatibility statement and liner maintenance guidelines; (510-156S-77/15(b))
- 8) The Department upon receipt of a livestock waste lagoon registration form shall review the form to determine that all required information has been provided. The person filing the registration shall be notified within 15 working days of receipt by the Department that registration is complete or that clarification information is needed. No later than 10 working days after the receipt of the clarification information, the Department shall notify the owner or operator that registration is complete or that additional clarification information is needed. (510-156S-77/15(b))
- d) The Department may, as a condition of the issuance of a livestock waste lagoon registration, conduct periodic site inspections of a livestock waste lagoon to assess its degree of compliance with the requirements of the Livestock Management Facilities Act (510-156S-77) and the requirements of this Part. The person making any inspection shall comply with reasonable animal health protection procedures as requested by the owner or operator. (510-156S-77/15(b))
- e) Construction shall not begin until 30 days after submittal of a registration form by certified mail to the Department. (510-156S-77/15(b))

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- a) The design of a liner constructed from in-situ soils, borrowed clay or a clay/bentonite mixture, or a synthetic liner pursuant to Section 506.204(d) of this Part shall comply with the requirements of this Section.
- b) A liner constructed using in-situ soil or borrowed clay or clay/bentonite mixtures shall meet the following standards:
- 1) The minimum liner thickness shall be 2 feet;
  - 2) The liner shall be constructed in lifts not to exceed 6 inches in thickness;
  - 3) The liner shall be compacted to achieve a hydraulic conductivity equal to or less than  $1 \times 10^{-7}$  centimeters/second; and
  - 4) The construction and compaction of the liner shall be carried out to reduce void spaces and allow the liner to support the loadings imposed by the waste disposal operation without settling.
- c) Any synthetic liner used in the construction of a livestock waste lagoon shall meet the following standards:
- 1) The liner shall be designed to perform equivalent to or better than a liner that conforms to subsection (b) of this Section;
  - 2) The liner manufacturer shall provide to the owner or operator the liner maintenance guidelines and shall certify that the liner is chemically compatible with:
    - A) The livestock waste being stored; and
    - B) The supporting soil materials;
  - 3) The liner shall be supported by a compacted base free from sharp objects;
  - 4) The liner shall have sufficient strength and durability to function at the site for the design period under the maximum expected loadings imposed by the waste and equipment and stresses imposed by settlement, temperature, construction and operation;
  - 5) The liner seams shall be made in the field according to the manufacturer's specifications. All sections shall be arranged so that the use of field seams is minimized and seams are oriented in the direction subject to the least amount of stress; and
  - 6) The owner or operator shall maintain a copy of the manufacturer's compatibility statement and liner installation and maintenance guidelines at the facility.
- d) The design, construction and installation of the liner in accordance with this Section shall be conducted under the direction of a Licensed Professional Engineer. Upon completion of construction or installation of the liner, the supervising Licensed Professional Engineer shall certify that the liner meets all the applicable requirements of this Section. Such certification shall include all supporting justification and data:
- e) The owner or operator of a livestock waste lagoon shall submit to the Department a copy of the Licensed Professional Engineer's Certification prior to placing the lagoon in service in accordance with Section 506.207 of this Part;
  - f) The owner or operator of the earthen livestock lagoon may, upon

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written request and with written approval from the Department, modify or exceed these standards in order to meet site specific objectives. The owner or operator shall demonstrate that such modification shall be at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the requirements of this Part. [510 ILCS 77/15(a)]

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.206 Groundwater Monitoring

- a) The owner or operator of any livestock waste lagoon required to implement groundwater monitoring pursuant to Section 506.204(d) of this Part shall implement a monitoring program which meets the requirements of this Section.
- b) The groundwater monitoring network shall consist of a minimum of three monitoring wells on the basis of local groundwater conditions within 20 feet of the exterior toe of the berm with at least two wells down gradient of the lagoon. For the purposes of groundwater monitoring network design, multiple cell lagoons shall be considered as a single lagoon.
- c) The monitoring wells shall be installed in accordance with the following:
- 1) The requirements of Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.170;
  - 2) The top of the well screen shall be set at the estimated seasonal low water table elevation;
  - 3) Monitoring wells shall utilize a five foot screened interval; and
  - 4) The screen shall be set in a sand pack of no less than five feet and no greater than seven feet.
- d) Prior to placing the lagoon in service, water level measurements shall be made at each monitoring well to establish the local groundwater gradient at the lagoon site.
- e) The owner or operator shall sample each monitoring well at least once prior to placing the lagoon in service and at least quarterly thereafter. The samples shall be collected and analyzed consistent with the methods specified in Section 506.104(f)(1) and (3) of this Part for each of the following:
- 1) Nitrate-nitrogen;
  - 2) Phosphate-phosphorous;
  - 3) Chloride;
  - 4) Sulfate;
  - 5) Ammonia-nitrogen;
  - 6) Escherichia coli or fecal coliform; and
  - 7) Pecal-Streptococcus.
- f) The Department may collect and analyze samples or split samples from monitoring wells installed pursuant to this Section at the



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Department's discretion. The Department shall provide notice to the owner or operator of the livestock waste lagoon of such activity and shall comply with reasonable animal health protection procedures as requested by the owner or operator. (510 ILCS 77/15(b))

g) Analytical results as determined in subsection (e) of this Section shall be submitted to the Department within 45 days after sample collection and shall include a discussion relative to the significance of the results. Such discussion of significance shall include:

- 1) A comparison of the results to the initial sampling made prior to the lagoon being placed in service; and
- 2) A description of any proposed response action necessary to mitigate potential impacts to groundwater.

h) The Department shall review the submittal provided pursuant to subsection (g) of this Section, evaluate the proposed response action and provide a time frame for the correction of any identified deficiencies. As a result of the evaluation, the Department may approve or modify the monitoring program or response action including but not limited to the following:

- 1) Increase or decrease the monitoring well sampling frequency;
- 2) Add or delete items from the list of sample analyses; or
- 3) Require changes to the design, construction or operation of the lagoon or changes in the operation of the livestock management facility which shall be implemented by the owner or operator within the time frame established by the Department.

i) Failure of the owner or operator to submit the information required pursuant to subsection (g) of this Section or to implement the response action approved or modified by the Department shall be considered a failure to construct a lagoon in accordance with the requirements of this Part and shall subject the owner or operator to penalties set forth in this Part and the Livestock Management Facilities Act [510 ILCS 77].

j) The owner or operator of the earthen livestock lagoon may, upon written request and with written approval from the Department, modify or exceed these standards in order to meet site specific objectives. The owner or operator shall demonstrate that such modification shall be at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the requirements of this Part. [510 ILCS 77/15(a)]

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.207 Certification of Construction (Repealed)

a) The Department shall inspect an earthen livestock waste lagoon at least once during the pre-construction, construction or post-construction phase and shall require modifications when necessary to ensure the project will be in compliance with the requirements of

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- this Part. (510 ILCS 77/15(b))
- b) Upon completion of construction or installation of a liner, the supervising licensed professional Engineer shall certify that the liner meets all the applicable requirements of Section 506.205 of this Part. Such certification shall be submitted to the Department prior to placing the lagoon in service and shall include supporting data and justification.
- c) Upon completion of the construction or modification, but prior to placing the lagoon in service, the owner or operator of the livestock waste lagoon shall certify on a form provided by the Department that the lagoon has been constructed or modified in accordance with the standards set forth in subsection (a) of Section 15 of the Livestock Management Facilities Act (510 ILCS 77) and the requirements of this Part and that the information provided on the registration form and other supporting documents as required by this Part is correct. The certification and signature of the Department shall include a certification statement and notice to the Department shall include a certification statement and signature. (510 ILCS 77/15(b))
- d) The owner or operator of the lagoon may proceed to place the lagoon in service no earlier than 10 working days after submitting to the Department a certification of compliance statement. (510 ILCS 77/15(b))

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.208 Failure to Register or Construct in Accordance with Standards (Repealed)

- a) The owner or operator of any earthen livestock waste lagoon subject to registration that has not been registered or constructed in accordance with standards set forth in subsection (a) of Section 15 of the Livestock Management Facilities Act (510 ILCS 77/15) and in this Part shall, upon being identified as such by the Department, be given written notice by the Department to register and certify the lagoon within 10 working days after receipt of the notice. The Department may inspect such lagoon and require compliance in accordance with subsections (a) and (b) of Section 15 of the Livestock Management Facilities Act (510 ILCS 77/15) and this Part. If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice, the Department may issue a cease and desist order until such time as compliance is obtained with the requirements of Section 15 of the Livestock Management Facilities Act (510 ILCS 77/15) and this Part. Failure to construct the lagoon in accordance with the construction plan and Department recommendations is a business offense punishable by a fine of not more than \$5,000. (510 ILCS 77/15(f))
- b) If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice which addresses

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violations occurring during lagoon construction, a cease-and-desist order to stop construction may be issued by the Department. Changes shall be made to the lagoon by the owner or operator to ensure construction according to the provisions of the Livestock Management Facilities Act (510 ILCS 77) and this Part. The cease-and-desist order shall be canceled by the Department upon submission of the registration materials by the lagoon owner or operator to the Department, and after the Department's review of the construction plans and specifications and lagoon registration materials, and after determination of compliance with the Livestock Management Facilities Act and this Part by the Department.

- c) If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice addressing violations which occur after completion of lagoon construction, an operational cease-and-desist order may be issued by the Department. Any necessary changes shall be made to the lagoon by the lagoon owner or operator to comply with the Livestock Management Facilities Act and this Part. The operational cease-and-desist order shall be canceled by the Department after the Department determines compliance with the Livestock Management Facilities Act and this Part.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.209 Lagoon Closure and Ownership Transfer (Repealed)

- a) When any earthen livestock waste lagoon is removed from service, it shall be completely emptied. Appropriate closure procedures shall be followed as determined by the requirements of this Part. (510 ILCS 77/15(e))

1) In the event that any earthen livestock waste lagoon is removed from service, the requirements contained in Section 15(e) of the Livestock Management Facilities Act (510 ILCS 77/15(e)) shall be met. The owner or operator shall notify the Department in writing when a lagoon is removed from service. Within 60 days after removal of the lagoon from service, the owner or operator shall submit a lagoon closure plan to the Department for review and approval. If no lagoon closure plan is received by the Department within 60 days, the Department shall send the lagoon owner a notice of default.

2) The lagoon closure plan shall provide for the following:

- A) The sampling, analysis and reporting of results of all remaining livestock waste, sludge and minimum six-inch thickness of soil from throughout the lagoon interior consistent with the requirements of Section 506.312 of this Part.

- B) The removal of all remaining livestock waste, including sludge, the removal of a minimum 6-inch thickness of soil

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from throughout the lagoon interior, and the application of these materials to crop land at agronomic rates consistent with the provisions of the site livestock waste management plan or their otherwise proper disposal.

- e) The removal of all associated appurtenances, including but not limited to transfer lines, ramps, pumping ports and other waste conveyance structures.

B) The proper management of any impounded precipitation in the remaining excavation if it is not immediately filed and the area immediately returned to its pre-construction condition.

- B) The proper abandonment of any monitoring wells installed pursuant to Section 506.206 of this Part, which shall be conducted pursuant to the Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.120, and

F) A proposed time frame for the completion of the closure activities no greater than two years from the cessation of operation date unless the lagoon is maintained or serviced.

- 3) The Department shall review and approve, reject or request additional information relative to the lagoon closure plan. The Department may also grant a waiver to any of the before-stated closure requirements that will permit the lagoon to be used for an alternative purpose. (510 ILCS 77/15(e))

- 4) Upon completion of the lagoon closure activities as prescribed by the Department approved closure plan, the owner or operator shall notify the Department. The Department shall conduct a site inspection and issue a written notification of closure completion or inform the owner or operator of any unresolved closure issues.

- b) A lagoon is considered removed from service when:
- 1) The Department has ordered the lagoon removed from service under Section 506.620 of this Part;

2) A tribunal of competent jurisdiction has ordered the lagoon closed or ordered the owner or operator to cease operations;

3) The lagoon no longer receives livestock waste and the lagoon is not being serviced or maintained;

4) The owner fails to extend the term for which evidence of financial responsibility is shown as required in Section 506.602(b) of this Part; or

5) The owner or operator informs the Department in accordance with subsection (a)(1) of this Section that the lagoon has been removed from service.

- c) Upon a change in the ownership of a registered earthen livestock waste lagoon, the new owner shall notify in writing the Department of the change within 30 working days of the closing of the transaction. (510 ILCS 77/15(e))

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## SUBPART C: WASTE MANAGEMENT PLAN

## Section 506.301 Purpose (Repealed)

livestock--waste--management--plans--shall--be--prepared--by--livestock--management facility--owners--or--operators--to--provide--for--adequate--land--area--for--the--proper application--of--livestock--waste--at--rates--not--to--exceed--the--agronomic--nitrogen demand--of--the--crops--to--be--grown--when--averaged--over--a--5--year--period {510--tBES 77/20(f)(4)}.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.302 Scope and Applicability (Repealed)

- a) A--waste--management--plan--shall--be--prepared--according--to--the requirements--contained--in--Section--20--of--the--Livestock--Management Facilities--Act--{510--tBES--77/20(i)}--and--in--this--Subpart. The--application of--livestock--waste--to--the--land--is--an--acceptable, recommended, and established--practice--in--Illinois. However, when--livestock--waste--is not--applied--in--a--responsible--manner, it--may--create--potential problems. It--should--be--recognized--that, in--most--cases, if--the agronomic--nitrogen--rate--is met, the--phosphorus--applied--will--exceed--the crop--requirements, but--not--all--of--the--phosphorus--may--be--available--for use--by--the--crop. It--will--be--considered--acceptable, therefore, to prepare--and--implement--a--waste--management--plan--based--on--the--nitrogen rate. {510--tBES--77/20(f)}.
- b) The--livestock--management--facility--owner--or--operator--at--a--facility--of less--than--1,000--animal--units--shall--not--be--required--to--prepare--and maintain--a--waste--management--plan. {510--tBES--77/20(b)}.
- c) The--livestock--management--facility--owner--or--operator--at--a--facility--of 1,000--or--greater--animal--units--but--less--than--7,000--animal--units--shall prepare--maintain--and--implement--a--waste--management--plan--and--comply with--the--following: {510--tBES--77/20(c)}.

- i) For--facilities--which--commence--operations--or--reach--or--exceed--1,000 animal--units--after--the--effective--date--of--this--Part, the--owner--or operator--shall--prepare--maintain, and--implement--a--waste management--plan--within--60--working--days--after--commencing operations--or--exceeding--1,000--animal--units.

- 2) Prior--to--the--expiration--of--the--waste--management--plan--preparation period, the--owner--or--operator--shall--submit--to--the--Department--a form--certifying--that--a--waste--management--plan--has--been--prepared. The--form--shall--also--list--the--location--of--the--plan.

- 3) The--waste--management--plan--and--records--of--livestock--waste--disposal shall--be--kept--on--file--at--the--facility--for--a--period--of--three--years and--shall--be--available--for--inspection--by--Department--personnel during--normal--business--hours, and

- 4) Notwithstanding the--above--provisions, a--livestock--management

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facility--subject--to--this--subsection (c)--may--be--operated--on--an interim--basis--but--not--to--exceed 6 months--after--the--effective--date of this--Part--to--allow--for--the--owner--or--operator--of--the--facility to--develop--a--waste--management--plan. {510--tBES--77/20(c)}.

d) The--livestock--management--facility--owner--or--operator--at--a--facility--of 7,000--or--greater--animal--units--shall--prepare, maintain, implement, and submit--to--the--Department--the--waste--management--plan--for--approval {510 tBES--77/20(d)}--and--comply--with--the--following:

- 1) For--facilities--which--commence--operations--after--the--effective--date of--this--Part, the--owner--or--operator--shall--submit--a--waste management--plan--to--the--Department. The--facility--shall--not commence--operation--before--the--Department--approves--the--plan.
- 2) For--existing--facilities--that--reach--or--exceed--7,000--animal--units through--expansion, the--owner--or--operator--shall--submit--to--the Department--a--waste--management--plan--within--60--working--days--after reaching--or--exceeding--7,000--animal--units--for--approval--by--the Department, and

- 3) The--waste--management--plan--and--records--of--livestock--waste--disposal shall--be--kept--on--file--at--the--facility--for--a--period--of--three--years and--shall--be--available--for--inspection--by--Department--personnel during--normal--business--hours.

- e) A--separate--waste--management--plan--shall--be--developed--for--each--livestock waste--handling--facility. Livestock--waste--from--each--different--type--of livestock--waste--storage--structure--or--system--shall--be--accounted--for--in separate--waste--management--plans--or--as--separate--sections--of--one--plan. Waste--from--different--types--of--storage--structures--may--be--applied--to--the same--land--provided--that--the--nitrogen--rate--to--obtain--targeted--crop yield--goals--is--not--exceeded.

- f) Notwithstanding the--above--provisions, a--facility--owner--or--operator--who prepared--a--waste--management--plan--pursuant--to--the--emergency--amendment adopted--in--R97-14--at--20--Ill--Reg--14903, effective--October--31,--1997 and--the--emergency--rules--adopted--in--R97-14--at--21--Ill--Reg--43137 effective--March--31,--1997, shall--be--deemed--to--have--prepared--a--waste management--plan--pursuant--to--this--Subpart.

- g) For--the--purposes--of--this--Subpart, the--number--of--animal--units--served--by a--livestock--waste--handling--facility--shall--be--determined--as--the--maximum design--capacity--of--the--livestock--management--facility--which--is--being served--by--the--livestock--waste--handling--facility.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.303 Waste Management Plan Contents (Repealed)

The--livestock--waste--management--plan--shall--contain--the--following--items:

- a) Name, address, and phone number of the owner(s) of the livestock facility.
- b) Name, address, and phone number of the manager or operator, if



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- different than the owner's;
- c) Address, phone number, and plat location of the facility, and directions from nearest post office;
- d) Type of waste storage for the facility;
- e) Species, general size, number of animals, and number of animal units at the facility;
- f) Aerial photos and maps outlining fields available and intended for livestock waste applications with available acreage listed and with residences, non-farm businesses, common places of assembly, streams, wells, waterways, lakes, ponds, rivers, drainage ditches, and other water sources indicated;
- g) For application fields not owned or rented, copies of waste application agreements between the owner or operator of the livestock facility and the owner of the land where livestock waste will be applied;
- h) An estimate of the volume of waste to be disposed of annually (510 ILCS 77/20(f)(1));
- i) Cropping schedule for each field for the past year, anticipated crops for the current year, and anticipated crops for the next two years after the current year;
- j) Targeted crop yield goal for each crop in each field;
- k) Estimated nutrient content of the livestock waste;
- l) Livestock waste application methods;
- m) Calculations showing the following:
- 1) Amount of available livestock waste for application;
  - 2) Amount of nitrogen available for application;
  - 3) Nitrogen loss due to method of application;
  - 4) Amount of plant available nitrogen including mineralization of organic nitrogen;
  - 5) Amount of nitrogen required by each crop in each field based on targeted crop yield goal;
  - 6) Nitrogen credits from previous crops, from other sources of fertilizer applied for the growing season, and from any manure applications during the previous three years for each application field;
  - 7) Livestock waste application rate based on nitrogen for each application field; and
  - 8) Band area required for application;
- n) A listing of fields and the planned livestock waste application amounts for each field;
- o) A provision that livestock waste applied within 1/4 mile of any residence not part of the facility shall be injected or incorporated on the day of application. However, livestock management facilities and livestock waste handling facilities that have irrigation systems in operation prior to May 21, 1997 or existing facilities applying waste on frozen ground are not subject to the provisions of this subsection (o) (510 ILCS 77/20(f)(5)).
- p) A provision that livestock waste may not be applied within 300 feet of

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- surface water unless the water is upgrade or there is adequate diking and waste will not be applied within 150 feet of potable water supply wells (510 ILCS 77/20(f)(6)).
- q) A provision that livestock waste may not be applied in a 10-year flood plain unless the injection or incorporation method of application is used (510 ILCS 77/20(f)(7)).
- r) A provision that livestock waste may not be applied in waterways. For the purposes of this Part, a grassed area serving as a waterway may receive livestock waste through an irrigation system if there is no runoff, the distance from applied livestock waste to surface water is greater than 200 feet, the distance from applied livestock waste to potable water supply wells is greater than 150 feet, the distance from applied livestock waste to a non-potable well, an abandoned or plugged well, a drainage well, or an injection well is greater than 100 feet, and precipitation is not expected within 24 hours (510 ILCS 77/20(f)(8)).
- s) A provision that if waste is spread on frozen or snow-covered land, the application will be limited to land areas on which:
- 1) Band slopes are 5% or less; or
  - 2) Adequate erosion control practices exist (510 ILCS 77/20(f)(9)).
- t) For livestock facilities utilizing an earthen lagoon or other earthen waste storage structure, a provision that the owner, operator, or certified livestock manager shall inspect all berm tops, exterior berm sides, and non-submerged interior berm sides for evidence of erosion, burrowing animal activity, and other indications of berm degradation on a frequency of not less than once every two weeks; and
- u) A provision that livestock waste may not be applied during a rainfall or to saturated soil and that conservative waste loading rates will be used in the case of a high water table or shallow earth cover to fractured bedrock. Caution should be exercised in applying livestock wastes, particularly on porous soils, so as not to cause nitrate or bacteria contamination of groundwaters.
- (Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.304 Livestock Waste Volumes (Repealed)

The volume of available livestock waste for application as required in Section 506.303(m)(1) of this Part shall be determined from site specific measurements of the waste storage structure. Calculations and a description of the volume determination shall be included in the waste management plan.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.305 Nutrient Content of Livestock Waste (Repealed)

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a) For new facilities without a waste management plan or facilities where a waste management plan is being initially prepared pursuant to this Part, the owner or operator shall obtain the nitrogen content of the livestock waste as required in Section 506-303(m)(2) of this Part from the results of a laboratory analysis of livestock waste samples from the waste storage facility or from estimated values provided by the University of Illinois Cooperative Extension Service or the Natural Resources Conservation Service of the United States Department of Agriculture.

b) The livestock waste handling facility owner or operator shall annually obtain a laboratory analysis of the nutrient content of the livestock waste to be applied to land as provided within the waste management plan. Livestock waste shall be sampled during the application process. Multiple subsamples shall be obtained and may be combined into one sample for analysis so that a representative sample is used for preparation of the waste management plan. A sample taken during waste application the previous year can be used as a representative sample of the waste to be applied the following year unless there has been a change in the waste management practices.

c) Livestock waste sampling shall be performed under the direction of a certified livestock manager to ensure a representative sample from the livestock waste storage facility and to preserve the integrity of the sample.

d) The laboratory analysis of the livestock waste sample shall include but not be limited to total nitrogen, ammonium nitrogen, total phosphorus, and total potassium. Results of the analysis shall be included in the waste management plan.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.306 Adjustments to Nitrogen Availability (Repealed)

Adjustments shall be made to nitrogen availability to account for nitrogen loss from livestock waste due to method of application as required in Section 506-303(m)(3) and to account for the conversion of organic nitrogen into a plant available form as required in Section 506-303(m)(4) of this Part.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.307 Targeted Crop Yield Goal (Repealed)

a) The targeted crop yield goal as required in Section 506-303(m)(5) of this Part shall be determined for each field where the livestock waste is to be applied. The targeted crop yield goal shall be determined by obtaining an average yield over a five year period from the field where livestock waste is to be applied. The following

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listing of sources of data shall be utilized to determine the targeted crop yield goal:

1) Proven yields. The proven yield shall be determined by obtaining an average yield over a five year period from the field where livestock waste is to be applied. The owner or operator shall indicate the method used to determine the proven yield. Data from years with crop disasters may be discarded. Proven yields shall be used unless there is sound agronomic basis for predicting a different targeted crop yield goal.

2) Crop insurance yields. A copy of the crop insurance yields shall be included in the plan or

3) Farm Service Agency. United States Department of Agriculture yields. A copy of the assigned crop yields shall be included in the plan.

b) Soils-based yield data from the Natural Resources Conservation Service of the United States Department of Agriculture shall be used if the owner or operator cannot obtain a targeted crop yield goal pursuant to subsection (a) of this Section. A soil map of the application areas shall be included in the plan. The targeted crop yield goal shall be determined by a weighted average of the soil interpretation yield estimates for the areas that will receive livestock waste.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.309 Nitrogen Credits (Repealed)

a) Nitrogen credits shall be calculated by the livestock facility owner or operator pursuant to Section 506-303(m)(7) of this Part for nitrogen producing crops grown the previous year for other sources of nitrogen applied for the growing season and for mineralized organic nitrogen in livestock waste applied during the previous three years.

b) Nitrogen credits shall be calculated by the livestock facility owner or operator for the mineralized organic nitrogen in livestock waste applied during the previous three years at the rate of 50%, 25%, and 12.5%, respectively, of that mineralized during the first year.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.310 Records of Waste Disposal (Repealed)

Records of the livestock waste disposal shall include the following items:

- a) Date of livestock waste application;
- b) The field where livestock waste application was made;
- c) Method of livestock waste application;
- d) Livestock waste application rate;
- e) Number of acres receiving waste; and

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## f) Amount-of-livestock-waste-applied:

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.311 Approval of Waste Management Plans (Repealed)

- a) Department-approval-of-livestock-waste-management-plans-shall-be-based-on-the-following-criteria:
- 1) Livestock-waste-application-rate-of-nitrogen-not-to-exceed--the-crop-nitrogen-requirements-for-targeted-crop-yield-goats;
  - 2) Demonstration--of--adequate--land--area--for--livestock--waste-application-based-on--Section-506-303-of-this-Party-and
  - 3) Completeness-and-accuracy--of--plan--contents--as--specified--in--Section-506-303-of-this-part;
- b) The--owner--or--operator--of--the--livestock-management-facility--shall--be notified-by-the-Department-within-30-working-days-after-receipt-of-the livestock-waste-management-plan-that-the-plan--has--been--approved--or that-further-information-or-changes-are-needed--The-owner-or-operator shall-provide-the-information-or-changes-within-30-working-days.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.312 Sludge Removal (Repealed)

- a) Within-60-days-prior-to-periodic-removal-of-sludge--from--a--livestock waste-storage-structure--the--livestock-facility-owner-or-operator shall-test--the-sludge--for--nutrient-content-pursuant-to--Section 506-305(c)--and-(d)-of-this-Subpart--Application-of-the-sludge-to-the land-shall-not-exceed-the-nitrogen-requirement-to-obtain-targeted yields-of-the-crop-to-be-grown;
- b) Prior-to-the-removal--of--the--remaining-livestock-waste-soil--and sludge-during-a-leagoon-closure--the-waste-soil--and-sludge--shall--be tested--for-nutrient-content-pursuant-to-Section-506-305(c)-and-(d)-of this-Subpart--Application-of-the-waste-soil--and-sludge-to-the-land shall-not-exceed-the-nitrogen-requirement-to-obtain-targeted-yields-of the-crop-to-be-grown;
- c) Nitrogen-requirements--based-on--targeted-yields-for-the-crop-to-be grown-may-be-met-but-shall-not-be-exceeded-by-any-combination--of--the following:
- 1) Livestock-waste-applications;
  - 2) Periodic-sludge-applications--or
  - 3) Remaining-livestock-waste-soil--or-sludge-applications-during-a waste-storage-structure-closure

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## Section 506.313 Plan Updates (Repealed)

- a) The--waste-management-plan-shall-be-reviewed-annually-by-the-livestock facility-owner-or-operator-and-updated-if-necessary-after-receipt-by the-owner-or-operator-of-the-nutrient-content-results-from-the laboratory--analysis--of--the--livestock--waste--as--required--in--Section 506-305(b)-(c)-and-(d)-of-this-Subpart--but-prior-to-the-next application-period-of-the-livestock-waste-to-the-land;
- b) The--waste-management-plan-shall-also-be-updated-when-at-least-one-of the-following-occurs:
- 1) A-change-in-the-amount-of-land-area-needed-to-dispose--of--the livestock--waste--based-upon--a-change-in-the-waste-volume-to-be disposed-of--nitrogen-content-of-the-livestock-waste--or--other factor;
  - 2) A--change--in--land--that--is--available--for--livestock--waste application-if-the-land-is-not-currently-included--in--the--waste management-plan;
  - 3) Method-of-livestock-waste-disposal-or-application-changes--or
  - 4) Cropping-sequence-changes--which--alter--the-amount-of-livestock waste-to-be-applied.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.314 Penalties (Repealed)

- a) Any-person-who-is-required-to-prepare-maintain-and-implement-a-waste management-plan-and-who-fails-to-do-so-shall-be-issued-a-warning letter-by-the-Department-for-the-first-violation-and-shall-be-given-30 working-days-to-prepare-a-waste-management-plan--For-failure-to prepare-maintain-and-implement-a-waste-management-plan--the-person shall-be-fined--an-administrative-penalty--of--up-to-\$500--by--the Department--and-shall-be-required-to-enter-into-an-agreement-of compliance-to-prepare-maintain-and-implement-a-waste-management-plan within-30-working-days--For-failure-to-prepare-maintain-and-implement a--waste-management-plan-after-the-second-30-day-period-or for-failure-to-enter-into-a-compliance-agreement--the-Department-may issue-an-operational-cease-and-desist-order-until-compliance-is attained: f610-bES-77(2019)
- b) The-operational-cease-and-desist-order-procedures-may-be-suspended--by the-Department-upon-submittal-of-a-waste-management-plan-by-the-owner or-operator-to-the-Department--the-cease-and-desist-order-shall-be canceled--by-the-Department-upon-approval-of-the-waste-management-plan by-the-Department;
- c) A-waste-management-plan-prepared-as-a-result-of-a-warning-letter--or compliance-agreement-shall-be-subject-to-approval-by-the-Department;
- d) Penalties--shall-not-be-imposed-for-excessive-nitrogen-application-for unplanned-cropping-changes--due-to--weather--or--other--unforeseeable



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## circumstances:

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART D: CERTIFIED LIVESTOCK MANAGER

## Section 506.401 Applicability (Repealed)

- a) A livestock waste handling facility serving 300 or greater animal units shall be operated only under the supervision of a certified livestock manager. Notwithstanding the before stated provision, a livestock waste handling facility may be operated on an interim basis, but not to exceed 6 months, to allow for the owner or operator of the facility to become certified. For the purposes of this Subpart, being operated under the supervision of a certified livestock manager shall mean that the certified livestock manager shall be immediately available to the workers at a livestock waste handling facility either in person or via telecommunications and shall have the ability to be physically present at the livestock waste handling facility within one hour after notification. (510-1BES-77/30(g))
- b) Persons may become certified livestock managers by demonstrating an understanding of and competence for the operation of livestock waste handling facilities as established in Section 30 of the Livestock Management Facilities Act (510-1BES-77) and further described in this Subpart. Livestock managers shall establish or re-establish certification when required to do so in accordance with Section 30 of the Livestock Management Facilities Act.
- c) A livestock manager certified pursuant to the emergency amendment adopted in 197-14 at 20-11-Reg. 149037 effective October 31, 1996 and the emergency rules adopted in 1997-14 at 21-111-Reg. 43137 effective March 31, 1997 shall be considered as certified pursuant to this Subpart.
- d) For the purposes of this Subpart, the number of animal units served by a livestock waste handling facility is the maximum design capacity of the livestock management facility which is being served by the livestock waste handling facility.
- e) For violations pertaining to the certified livestock manager requirements, the owner or operator shall be issued a warning letter for the first violation and shall be required to have a certified manager for the livestock waste handling facility within 30 working days. For failure to comply with the warning letter within the 30-day period, the person shall be fined an administrative penalty of up to \$500 by the Department and shall be required to enter into an agreement to have a certified manager for the livestock waste handling facility within 30 working days. For failure to comply with the agreement to have a certified manager for the livestock waste handling facility within the 30-day period or for failure to enter into a

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compliance agreement, the person shall be fined up to \$1,000 by the Department and shall be required to enter into an agreement to have a certified manager for the livestock waste handling facility within 30 working days. For continued failure to comply, the Department may issue an operational cease and desist order until compliance is attained. (510-1BES-77/30(g)) The cease and desist order shall be canceled by the Department upon presentation to the Department of a valid certified livestock manager certificate issued in the name of the owner, operator or current employee of the livestock facility.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART E: PENALTIES

## Section 506.501 General (Repealed)

The penalties for violations of the Livestock Management Facilities Act (510-1BES-77) and this Part shall be those as identified in the Livestock Management Facilities Act and further described in this Part and Subpart. Warning letters and written notices from the Department shall be sent via certified mail to the livestock facility owner or operator.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART F: FINANCIAL RESPONSIBILITY

## Section 506.601 Scope, Applicability, and Definitions (Repealed)

- a) This Subpart provides procedures by which the owner of a new or modified livestock waste lagoon registered under the Livestock Management Facilities Act provides evidence of financial responsibility satisfying the requirements of Section 17 of the Livestock Management Facilities Act.
- b) Owners of lagoons must comply with the financial responsibility requirements of this Part either:
- 1) on or before June 17, 1999; or
  - 2) before the lagoon is placed in service.
- c) For the purposes of this Subpart, the following terms have the following meanings:
- 1) "financial institution" means:
    - A) An insurer providing commercial or private insurance to evidence financial responsibility for lagoon closure in accordance with Section 506.610 of this Part;
    - B) A guarantor providing a guarantee as evidence of financial responsibility for lagoon closure in accordance with Section 506.611 of this Part;

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d) The lagoon owner must ensure that the terms and conditions of the surety instrument(s) listed in subsection (a) of this Section upon which the owner relies are legally valid, binding, and enforceable under State and Federal law.

e) The issuer of a surety bond as evidence of financial responsibility for lagoon closure in accordance with Section 506-612 of this Part.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

B) The issuer of a letter of credit as evidence of financial responsibility for lagoon closure in accordance with Section 506-613 of this Part; or

Section 506.603 Level of Surety (Repealed)

B) The livestock waste lagoon closure fund managed by the Illinois Farm Development Authority that evidences financial responsibility for lagoon closure in accordance with Section 506-615 of this Part.

a) The level of surety is determined by the following formula:

2) "level of surety" means the level calculated in accordance with Section 506-603 of this Part, at which evidence of financial responsibility must be provided;

Level of Surety = (V x EP) + BE

where:

V = Volume of the lagoon as constructed or modified in cubic feet, including the freeboard volume;

EP = Cost factor determined pursuant to subsection (b) of this Section; and

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

BE = Engineering contingency determined under subsection (c) of this Section.

Section 506.602 Mechanisms for Providing Evidence of Financial Responsibility (Repealed)

b) The cost factor is obtained from the following:

- 1) Commercial or private insurance;
- 2) Guarantor;
- 3) Surety bond;
- 4) Letter of credit;
- 5) Certificate of deposit or designated savings account; or
- 6) Participation in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority. (510-IRES-77/17)

- 1) From January 1, 2003, through December 31, 2007, the cost factor is 10¢ per cubic foot of lagoon volume.
- 2) From January 1, 2008, the cost factor is 12¢ per cubic foot of lagoon volume.
- 3) After January 1, 2008, the cost factor is 15¢ per cubic foot of lagoon volume.

c) The engineering contingency is equal to 10% of (V x EP).

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.604 Upgrading Surety Instrument (Repealed)

a) The owner of a lagoon must increase the total amount of surety in place so as to equal the level of surety as calculated within 90 days after:

- 1) a modification resulting in an increase in the volume of the lagoon; or
- 2) an increase in the cost factor under Section 506-603(b) of this Part.

b) If modification of a lagoon results in a decrease in volumetric capacity, the owner or operator may provide the Department with

a) Upon a change in the ownership of a livestock management facility or livestock waste handling facility involving a lagoon that is subject to the financial responsibility requirements of this Subpart, the new owner must establish and maintain evidence of financial responsibility at the same level of surety as the previous owner.

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documentation of the reduction in volumetric capacity and request a recalculation of the level of surety. Within 90 days after a request by the owner or operator under this subsection, the Department must either:

- 1) release any surety amount above the level of surety as recalculated based upon the owner's documentation of reduction of volumetric capacity; or
  - 2) conduct an inspection and determine the amount by which volumetric capacity has been decreased.
- c) If the Department conducts an inspection under subsection (b), then the Department must release any surety amount above the level of surety as recalculated based upon the results of the inspection.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.605 Release of Lagoon Owner and Financial Institution (Repealed)

a) The Department must release a lagoon owner from the requirements of this Subpart when:

- 1) The lagoon has been properly closed and a notification of closure completion pursuant to Section 506.209 of this Part has been issued to the lagoon owner by the Department; or
- 2) A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose or
- 3) Title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 506.602(c) of this Part.

b) The Department must release a financial institution when:

- 1) A lagoon owner offers an authorized alternative surety that meets the requirements of Section 506.607(c) of this Part; or
  - 2) The Department releases the lagoon owner from the requirements of this Subpart under subsection (a) of this Section.
- c) The Department must notify the lagoon owner and financial institution in writing within 60 days after a release under this Section. If a release is based upon proper closure of a lagoon, notification under this subsection should occur at the same time as notice of proper closure under Section 506.209(a)(4).

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.606 Financial Responsibility Proceeds (Repealed)

- a) A financial institution issuing a surety instrument evidencing financial responsibility for closure of a livestock waste lagoon becomes liable on the surety instrument when a lagoon is removed from service and:

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- 1) The owner fails to submit the lagoon closure plan required by Section 506.209 of this Part and:
  - A) cannot be found; or
  - B) fails to cure such failure within 30 days after notice from the Department.
- 2) The owner fails to obtain Department approval of a lagoon closure plan within eight months after the date that the lagoon is removed from service unless the lagoon is maintained or serviced; or
- 3) The owner fails to comply with an approved lagoon closure plan and:
  - A) cannot be found; or
  - B) fails to cure such noncompliance within 30 days after notice from the Department.

b) The Department must provide notice to the financial institution providing surety for the lagoon:

- 1) when it determines that the lagoon has been removed from service; and
- 2) when it determines that one of the criteria for liability set forth in subsection (a) of this Section has been met.

c) Within 30 days after notice of liability from the Department, the financial institution must either assume liability for closure of the lagoon and notify the Department of its election to assume liability or deposit the amount for which it is liable in connection with the lagoon into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon.

If the financial institution assumes liability for closure of the lagoon, it must submit a lagoon closure plan that meets the requirements of Section 506.209 of this Part within 60 days after notifying the Department of its election. Notwithstanding the financial institution's assumption of liability for closure of the lagoon, the Department may require the financial institution to deposit funds up to the amount for which the financial institution is liable under the surety instrument into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon if:

- A) the financial institution does not submit the lagoon closure plan as required and fails to cure such omission within 30 days after notice from the Department;
  - B) the financial institution fails to obtain Department approval of a lagoon closure plan within eight months after the date that it elects to assume liability for closure of the lagoon; unless the lagoon is maintained or serviced; or
  - C) the financial institution fails to comply with an approved lagoon closure plan and fails to cure such noncompliance within 30 days after notice from the Department.
- 2) A financial institution that assumes liability for closure of a lagoon under this Section remains liable for the full amount of



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~~the surety instrument until the Department issues written notification of completion of closure in accordance with Section 506.607 notwithstanding the expiration of the instrument utilized to evidence financial responsibility by the owner.~~

- 3) ~~Any amounts that a financial institution may expend for service or maintenance of the lagoon pending closure or for partial closure of the lagoon do not reduce the amount of the financial institution's obligation under this subsection (c).~~
- 4) ~~If the financial institution elects or is required under subsection (c)(1) of this Section to deposit the funds required by the Department into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon, then the Department shall close the lagoon within the time frame established under Section 15(e) of the BMA or as soon as practicable to the extent possible utilizing the funds deposited by the financial institution. The Department may use any interest earned on deposited funds to close the lagoon. The Department must release any funds remaining in the account, including any remaining interest earned on funds in the account, to the financial institution upon completion of closure.~~
- d) ~~The Department may sue in any court of competent jurisdiction to enforce its rights under any surety instrument.~~

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.607 Use of Multiple Surety Instruments (Repealed)

- a) ~~The lagoon owner may use any combination of the surety instruments listed in Section 17 of the Livestock Management Facilities Act (610 ILCS 77/17) and this Subpart to evidence the required level of financial responsibility.~~
- b) ~~A lagoon owner is not limited to maintaining financial responsibility with the original surety instrument or combination of instruments. The owner must notify the Department before making any change in surety instruments.~~
- c) ~~If a lagoon owner makes any change in surety instruments, the lagoon owner must maintain the total financial responsibility for the lagoon at a level not less than counting the amounts to be released than the level of surety.~~
- d) ~~A replacement surety instrument or instruments must provide evidence of financial responsibility for a period at least equal to the existing instrument or instruments. This provision does not relieve an owner of the obligation under Section 506.602(b) to provide proof at least two years prior to expiration of a surety instrument that the term for which financial responsibility has been demonstrated has been extended for at least an additional year.~~

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(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.608 Use of a Single Surety Instrument for Multiple Lagoons (Repealed)

- a) ~~An owner may use a surety instrument specified in this Subpart to provide evidence of financial responsibility for more than one lagoon. Whenever a single surety instrument is used for multiple lagoons, the owner must submit an itemization to the Department identifying all lagoons covered by the surety instrument and the amount allocated to each lagoon.~~
- c) ~~The amount of funds available through the surety instrument must be no less than the sum of funds that would be available if a separate surety instrument had been established and maintained for each lagoon.~~
- d) ~~In directing funds available through a single surety instrument for the closure of any single lagoon covered by that surety instrument, the Department shall direct only the amount of funds designated for that lagoon unless the owner agrees to allow the Department to use additional funds available under that surety instrument. Such an agreement does not affect the owner's obligation to provide evidence of financial responsibility up to the level of surety for all other lagoons.~~

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.610 Commercial or Private Insurance (Repealed)

- a) ~~A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining closure insurance that conforms to the requirements of this Subpart and submitting an executed duplicate original of such insurance policy to the Department.~~
- b) ~~The insurer must be licensed to transact the business of insurance by the Illinois Department of Insurance pursuant to the Illinois Code of Regulations (215 ILCS 5).~~
- c) ~~The policy must be on forms approved by the Illinois Department of Insurance.~~
- d) ~~The closure insurance policy must guarantee that funds will be available to close the lagoon. The policy must also guarantee that upon a notice of liability from the Department, the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy in accordance with Section 506.602(c) of this Part.~~
- e) ~~The policy must provide that the insurer may not cancel or terminate the policy.~~

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(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.611 Guarantee (Repealed)

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a guarantee that conforms to the requirements of this Subpart.
- b) A guarantor must submit a financial statement to the Department from the guarantor's most recent fiscal year.
- c) The Department will review the financial statement, determine if adequate resources exist to guarantee the closure costs, and notify the lagoon owner of acceptance or denial within 30 days after receipt of the financial statement by the Department.
- d) The guarantor shall guarantee to pay the amount specified in the guarantee upon notice from the Department as provided in Section 506.606(c) of this Part.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.612 Surety Bond (Repealed)

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a surety bond that conforms to the requirements of this Subpart and submitting the bond to the Department.
- b) The surety company issuing the bond must be licensed by the Illinois Department of Insurance pursuant to the Illinois Insurance Code (215 ILCS 5) and approved by the U.S. Department of the Treasury as an acceptable surety. Acceptable sureties are listed in Circular 570 from the U.S. Department of the Treasury.
- c) The bond must guarantee that the lagoon owner will provide lagoon closure and content removal in accordance with Section 506.209 of this Part.
- d) The surety bond must be in substantially the form specified in Appendix A-7 illustration A of this Part.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.613 Letter of Credit (Repealed)

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Subpart and submitting the letter to the Department.
- b) The issuing institution must be an entity that has the authority to

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- issue letters of credit and:
  - 1) whose letter of credit operations are regulated by the Illinois Commission of Banks and Real Estate, or
  - 2) whose deposits are insured by the Federal Deposit Insurance Corporation, or the Federal Savings and Loan Insurance Corporation.
- c) The letter of credit made out to the Department must be accompanied by a letter from the lagoon owner referring to the letter of credit by number, issuing institution, and date, and providing the following information: name and address of the lagoon site and the amount of funds assured for closure of the lagoon by the letter of credit.
- d) The letter of credit must be substantially in the form specified in Appendix A-7 illustration B of this Part.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.614 Certificate of Deposit or Designated Savings Account (Repealed)

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by designating certificate(s) of deposit or savings account(s) for use as financial responsibility.
- b) The issuing or depository financial institution must be an entity whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- c) The Department may draw on the certificate(s) of deposit or savings account(s) to pay the costs of closing a lagoon in accordance with this subsection. The Department shall close a lagoon when the lagoon is removed from service and:
  - 1) The owner fails to submit the lagoon closure plan required by Section 506.209 of this Part; or
  - A) cannot be found; or
  - B) fails to cure such failure within 30 days after notice from the Department.
- 2) The owner fails to obtain Department approval of a lagoon closure plan within eight months after the date that the lagoon is removed from service, unless the lagoon is maintained or serviced; or
- 3) The owner fails to comply with an approved lagoon closure plan and:
  - A) cannot be found; or
  - B) fails to cure such noncompliance within 30 days after notice from the Department.
- d) The Director of the Department shall be listed as trustee of the certificate(s) of deposit or savings account(s) for the lagoon owner.
- e) At maturity of any certificate of deposit designated as financial responsibility for lagoon closure, the certificate shall be renewed or

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the proceeds deposited into a designated savings account that meets the requirements of this Section:

- f) the Department shall relinquish trusteeship of the certificate(s) of deposit or savings account(s) when:

- 1) the lagoon has been properly closed and a notification of closure completeness pursuant to Section 506.609 of this Part has been issued to the lagoon owner by the Department;
- 2) A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose pursuant to Section 506.609 of this Part;
- 3) title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 506.602(c) of this Part; or
- 4) A lagoon owner offers an authorized alternative surety which meets the requirements of Section 506.607(c) of this Part.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 506.615 Participation in a Livestock Waste Lagoon Closure Fund (Repealed)

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by participating in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority. An owner electing to provide evidence of financial responsibility under this Section must submit a certificate of participation in such a lagoon closure fund to the Department.
- b) The certificate of participation submitted pursuant to subsection (a) of this Section must include:
  - 1) the level of surety for the lagoon;
  - 2) the dollar amount of coverage provided by the lagoon closure fund;
  - 3) the dates for which coverage is provided; and
  - 4) a financial statement of the lagoon closure fund establishing the lagoon closure fund's compliance with the requirements of this Section.
- c) The lagoon closure fund must maintain minimum reserves equal to the greater of:
  - 1) the level of surety of the largest lagoon covered by the lagoon closure fund; or
  - 2) twice the average level of surety of lagoons covered by the fund.
- d) The lagoon closure fund must guarantee that funds will be available to close the lagoon. Upon a notice of liability from the Department, the lagoon closure fund must comply with the requirements of Section 506.606(c) of this Part.
- e) If the reserves of the lagoon closure fund are reduced to less than the minimum amount required under subsection (b) due to expenditures

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of funds in order to comply with Section 506.606(c), then within 120 days after such reduction the lagoon closure fund must demonstrate to the Department that the minimum reserve level has been restored.

- f) the lagoon closure fund may not cancel or terminate coverage prior to the date set forth in the certification pursuant to subsection (b)(3) of this Section.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 506.620 Penalties (Repealed)

The Department may order a lagoon removed from service if the owner fails to provide evidence of financial responsibility to the Department or fails to maintain financial responsibility in the amount required pursuant to Section 506.603 of this Subpart.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART G: SETBACKS

#### Section 506.701 Applicability (Repealed)

- a) All new livestock management or livestock waste handling facilities shall comply with the setback distances as established in Section 35 of the Livestock Management Facilities Act (510 ILCS 77/35) and with the provisions of this Subpart.
- b) Commencement of operations at a facility reconstructed within two years after partial or total destruction due to natural causes such as tornado, fire, flood, or earthquake shall not be considered the location of a new livestock management or waste handling facility for setback purposes. Likewise, a residence partially or totally destroyed due to natural causes such as tornado, fire, flood, or earthquake shall retain its original setback for a period of no greater than two years to allow for reconstruction of the residence.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 506.702 Procedures (Repealed)

- a) Grandfather provision: Facilities in existence prior to July 15, 1991, livestock management facilities and livestock waste handling facilities in existence prior to July 15, 1991, shall comply with setbacks in existence prior to July 15, 1991, as set forth in the Illinois Environmental Protection Act and 35 Ill. Adm. Code 501.402 (510 ILCS 77/35(a)).



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- b) Grandfather provision: Facilities in existence on effective date and after July 15, 1991, livestock management facilities and livestock waste handling facilities in existence on May 21, 1996 (the effective date of the Livestock Management Facilities Act) but after July 15, 1991 shall comply with setbacks in existence prior to May 21, 1996 as set forth in the Illinois Environmental Protection Act and 35 Ill. Adm. Code 501.402. (510-IBES-77735(b))
- c) New livestock management or livestock waste handling facilities: Any new facility shall comply with the following setbacks: (510-IBES-77735(c))
- 1) Residence and Non-Farm Residence: For purposes of determining setback distances, minimum distances shall be measured from the nearest corner of the residence to the nearest corner of the earthen waste lagoon or livestock management facility, whichever is closer.
  - 2) Common place of assembly or non-farm business: For the purposes of determining setback distances between a common place of assembly or non-farm business:
    - A) When the primary activity at a common place of assembly or non-farm business is an outdoor activity, minimum distances shall be measured from the nearest corner of the earthen waste lagoon or livestock management facility to the nearest point on the legal property line of the common place of assembly or non-farm business.
    - B) When the primary activity at a common place of assembly or non-farm business is not an outdoor activity and is an indoor activity, minimum distances shall be measured from the nearest corner of the earthen waste lagoon or livestock management facility to the nearest corner of the structure where the indoor activity takes place.
  - 3) A livestock management facility or livestock waste handling facility serving less than 50 animal units shall be exempt from setback distances as set forth in the Livestock Management Facilities Act but shall be subject to rules promulgated under the Illinois Environmental Protection Act.
  - 4) For a livestock management facility or waste handling facility serving 50 or greater but less than 1,000 animal units, the minimum setback shall be 1/4 mile from the nearest occupied non-farm residence and 1/2 mile from the nearest populated area.
  - 5) For a livestock management facility or livestock waste handling facility serving 1,000 or greater but less than 7,000 animal units, the setback is as follows:
    - A) For a populated area, the minimum setback shall be increased 440 feet over the minimum setback of 1/2 mile for each additional 1,000 animal units over 1,000 animal units.
    - B) For any occupied residence, the minimum setback shall be increased 220 feet over the minimum setback of 1/4 mile for each additional 1,000 animal units over 1,000 animal units.
- 6) For a livestock management facility or livestock waste handling facility serving 7,000 or greater animal units, the setback is as follows:
  - A) For a populated area, the minimum setback shall be 1/2 mile.
  - B) For any occupied residence, the minimum setback shall be 1/2 mile.
- d) Requirements governing the location of a new livestock management facility or new livestock waste handling facility and conditions for exemptions or compliance with the maximum feasible location as provided in 35 Ill. Adm. Code 501.402 concerning agriculture related pollution shall apply to those facilities identified in subsections (b) and (c) of this Section. With regard to the maximum feasible location requirements, any reference to a setback distance in 35 Ill. Adm. Code 501.402 shall mean the appropriate distance as set forth in this Section. (510-IBES-77735(d))
- e) Setback category shall be determined by the design capacity in animal units of the livestock management facility. (510-IBES-77735(e))
- f) Setbacks may be decreased when innovative designs as approved by the Department are incorporated into the facility. (510-IBES-77735(f))
- 1) An owner or operator shall request a setback decrease in writing prior to construction.
  - 2) An owner or operator shall attach to the request for decrease a certification by a licensed Professional Engineer that in the professional judgment of the licensed Professional Engineer, the innovative designs incorporated into the facility will provide more odor protection than the original setbacks.
  - 3) The Department shall notify the owner or operator of its determination within 30 days after the receipt of the request for decrease in approving a reduction in setbacks due to innovative designs. The Department shall specifically find that such use of an innovative design will provide more odor protection than the original setbacks.
  - 4) Where the Department grants such a decrease from the setbacks, the Department must maintain a file which includes all supporting data and justification which it relied upon in making its determination. This file is subject to public inspection.
- g) A setback may be decreased when waivers are obtained from owners of residences that are occupied and located in the setback area. (510-IBES-77735(g)) A setback also may be decreased when waivers are obtained from owners of non-farm businesses or common places of assembly that are located in the setback area.
- 1) An owner or operator request for a setback decrease shall be in writing and submitted to the Department prior to construction.
  - 2) An owner or operator shall attach to the request copies of the written and notarized waivers from all the owners of the residences, non-farm businesses, and common places of assembly that are located within the setback area.
  - 3) Within 30 days after receipt of the request and waivers, the

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Department shall notify the owner or operator in writing of the setback decrease.

4) When such a decrease from the setbacks is requested, the Department must maintain a file which includes all supporting data and justification concerning the setback decrease. This file is subject to public inspection.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.703 Initial Determination of Setbacks (Repealed)

The requirements of this Section do not apply to new livestock management facilities or new livestock waste handling facilities serving less than 50 animal units.

a) An owner or operator shall file a notice of intent to construct which meets the informational requirements of subsection (b) of this Section for a new livestock management facility or new livestock waste handling facility with the Department prior to construction to establish an initial determination of setbacks.

b) The notice of intent to construct shall contain a legal description of the land on which the livestock facility will be constructed, the name(s) and address(es) of the owner(s) or operator(s) of the facility, the type and size of the facility and number of animal units, the names and addresses of the owner(s) including local, State and Federal government, of the property located within the setback area, the distance to the nearest populated area, residence, non-farm business and common place of assembly, a map or sketch showing the proposed facility and setbacks and a statement identifying whether a request for decrease in setbacks pursuant to Section 506.704(f) or (g) has been sought and whether the request has been granted or denied yet.

c) The owner or operator shall mail by certified mail the notice of intent to construct to the owner(s) of the property located within the setback distances, the owner(s) of the property located within the setback distances are presumed unless established to the contrary, to be person shown by the current collector's warrant book to be the party in whose name the taxes were last assessed.

d) Within 30 days after receipt of the notice to construct, the Department shall notify the owner or operator in writing whether the setback distances have been met.

e) The date the notice of intent to construct is filed with the Department establishes the base date for the determination of whether residences, non-farm businesses or common places of assembly exist for setback purposes and shall remain the base date if construction begins within one year following receipt of the Department's determination or if a lagoon registration form is filed with the Department within one year after receipt of the Department's

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determination of compliance with the setback distances.

f) If the Department determines that the owner or operator has complied with the setback requirements, it may issue one of the following to the owner or operator of the livestock management facility or livestock waste handling facility:

1) If during construction a cease and desist order which prohibits further construction of the livestock management facility or livestock waste handling facility, prohibits entry of livestock into the livestock management facility and prohibits use of the livestock waste handling facility, or

2) An operational cease and desist order.

A cease and desist order issued by the Department pursuant to subsection (a) of this Section shall be canceled by the Department pursuant to the following:

1) Submission to the Department of a valid waiver as provided for in Section 506.702(g) of this Subpart by the livestock management facility owner or operator or the livestock waste handling facility owner or operator, or

2) Verification by the Department of compliance with the appropriate setback distances as described in Section 506.704 of the Bivestock Management Facilities Act (510 ILCS 77/35).

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 506.704 Penalties (Repealed)

a) For violations of the setback distance requirements, the Department may issue one of the following to the owner or operator of the livestock management facility or livestock waste handling facility:

1) If during construction a cease and desist order which prohibits further construction of the livestock management facility or livestock waste handling facility, prohibits entry of livestock into the livestock management facility and prohibits use of the livestock waste handling facility, or

2) An operational cease and desist order.

A cease and desist order issued by the Department pursuant to subsection (a) of this Section shall be canceled by the Department pursuant to the following:

1) Submission to the Department of a valid waiver as provided for in Section 506.702(g) of this Subpart by the livestock management facility owner or operator or the livestock waste handling facility owner or operator, or

2) Verification by the Department of compliance with the appropriate setback distances as described in Section 506.704 of the Bivestock Management Facilities Act (510 ILCS 77/35).

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

Section 506. APPENDIX A Surety Instruments (Repealed)

Section 506. ILLUSTRATION A Surety Bond (Repealed)

## SURETY-BOND

Date bond executed: -----

Effective date: -----

Principal: -----

Type of organization: -----

State of incorporation: -----

Surety: -----

Sites: -----

Name: -----

Address: -----

City: -----

Amount guaranteed by this bond: \$ -----

Name: -----

Address: -----

City: -----

Amount guaranteed by this bond: \$ -----

Please attach a separate page if more space is needed for all sites.

Total penal sum of bond: \$ -----

Surety's bond number: -----

The Principal and the Surety promise to pay the Illinois Department of Agriculture ("Department") the above penal sum unless the Principal provides closure for each site in accordance with 518-10CS-777151e) and 35-111-Adm Code-506-209. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

Whereas the Principal is required under Section 15(b) of the Livestock Management Facilities Act ("BMPA") to register at least one livestock waste lagoon with the Department; and

Whereas the Principal is required under Section 17 of the BMPA to evidence financial responsibility for closure of each registered lagoon; and

Whereas the Surety is licensed by the Illinois Department of Insurance; and

Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State of Illinois;

The Surety shall pay the penal sum to the Department if, during the term of the bond, the Department issues a notice of liability to the Surety;

The Surety shall pay the penal sum of the bond to the Department within 30 days after the Department mails the notice of liability to the Surety unless the Surety assumes responsibility to provide closure and so notifies the Department. Payment shall be made by deposit of funds into a designated account upon which the Department is authorized to draw;

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum. If the Surety assumes responsibility to provide closure, expenditures made by the Surety for that purpose may exceed the amount of the penal sum but the amount of the Surety's obligation under this bond is not affected;

This bond shall expire on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

The Principal may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the Department;

In Witness Whereof, the Principal and Surety have executed this Surety Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety.

PRINCIPAL

Signature Name -----

Typed Name -----

Address -----

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

Title-----

State-of-incorporation-----

Date-----

Corporate-seat-----

CORPORATE-SURETY

Signature-----

Typed-Name-----

Title-----

Corporate-seat-----

Bond-premium--\$-----

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

Section 506. ILLUSTRATION B Irrevocable Standby Letter of Credit (Repealed)

IRREVOCABLE-STANDBY-LETTER-OF-CREDIT

Director

Illinois-Department-of-Agriculture

P.O.-Box-19281

Springfield-IL-62794-9281

Dear-Sir-or-Madam:

We have authority to issue letters of credit. Our letter of credit operations are regulated by the Illinois Commissioner of Banks and Real Estate. Our deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. (omit language that does not apply.)

We hereby establish our irrevocable standby letter of credit. No \_\_\_\_\_ in your favor, at the request and for the account of \_\_\_\_\_ up to the aggregate amount of \_\_\_\_\_ U.S. dollars (\$ \_\_\_\_\_), available upon presentation of:

1. your sight draft, bearing reference to this letter of credit. No \_\_\_\_\_, and  
2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Investment Management Facilities Act (510 ILCS 77) and 35 Ill. Adm. Code 506.606(a) or 506.606(c)."

The letter of credit is effective as of \_\_\_\_\_ and shall expire on \_\_\_\_\_.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of draft directly into a designated account in accordance with your instructions.

This letter of credit is governed by the Uniform Commercial Code (810 ILCS 5).

Signature-----

Typed-Name-----

Date-----

Name-and-address-of-issuing-institution-----

This credit is subject to-----

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3) Section Numbers: Proposed Action:  
130.2105 Amendment
- 4) Statutory Authority: 35 ILCS 120
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking codifies the test set forth in Moody's Investors Service v. Department of Revenue, 101 Ill.2d 291, used to determine if a publication qualifies as a magazine for purposes of the newsprint and ink exemption. The regulation is also amended to explain that the newsprint and ink exemption does not extend to the conveyance of news by means of tangible personal property other than newsprint and ink, e.g., by means of CD-ROM disc, film or microfilm.

The regulation articulates a position that downloads of information or data (e.g., books or music downloaded electronically) represent the transfer of an intangible, and thus are not subject to Retailers' Occupation and Use Tax. The title of this regulation is amended to reflect inclusion of this policy. This rulemaking specifically reverses the Department's prior incorrect position that transfers of information or data constitute sales of software subject to Retailers' Occupation Tax and Use Tax. This position was expressed in letter rulings ST-91-0210, ST-94-0461, ST-91-0212 and ST-97-0342, which are hereby revoked by this rulemaking. The regulation clarifies, however, that sales of canned software, as defined in Section 130.1935, continue to be subject to Retailers' Occupation and Use Tax.

- 6) Will this proposed rulemaking replace an emergency rulemaking currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>IL Register Citation</u>
130.330	Amendment	5/26/00, 24 Ill. Reg. 7617
130.605	Amendment	9/8/00, 24 Ill. Reg. 13617
130.325	Amendment	9/29/00, 24 Ill. Reg. 14393
130.901	Amendment	11/13/00, 24 Ill. Reg. 16573
130.101	Amendment	11/17/00, 24 Ill. Reg. 16986
130.350	Amendment	12/15/00, 24 Ill. Reg. 17948
130.535	Amendment	12/22/00, 24 Ill. Reg. 18505

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

- 10) Statement of Statewide Policy Objectives: This rulemaking does not impose a state mandate.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rule may submit them in writing by no later than 45 days after publication of this notice to:
- Jerilynn T. Gorden  
Senior Counsel  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
Phone: (217) 782-2844
- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Persons involved in the newspaper and magazine business; persons making purchases of qualifying newsprint and ink industries; persons who transfer information which is electronically downloaded by purchasers.

B) Reporting, bookkeeping or other procedures required for compliance: Minimal.

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 2000

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 86: REVENUE

## CHAPTER I: DEPARTMENT OF REVENUE

## PART 130

## RETAILERS' OCCUPATION TAX

## SUBPART A: NATURE OF TAX

Section	
130.101	Character and Rate of Tax
130.105	Responsibility of Trustees, Receivers, Executors or Administrators
130.110	Occasional Sales
130.111	Sale of Used Motor Vehicles by Leasing or Rental Business
130.115	Habitual Sales
130.120	Nontaxable Transactions

## SUBPART B: SALE AT RETAIL

Section	
130.201	The Test of a Sale at Retail
130.205	Sales for Transfer Incident to Service
130.210	Sales of Tangible Personal Property to Purchasers for Resale
130.215	Further Illustrations of Sales for Use or Consumption Versus Sales for Resale
130.220	Sales to Lessors of Tangible Personal Property
130.225	Drop Shipments

## SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section	
130.305	Farm Machinery and Equipment
130.310	Food, Drugs, Medicines and Medical Appliances
130.315	Fuel Sold for Use in Vessels on Rivers Bordering Illinois
130.320	Gasohol
130.321	Fuel Used by Air Common Carriers in International Flights
130.325	Graphic Arts Machinery and Equipment Exemption
130.330	Manufacturing Machinery and Equipment
130.331	Manufacturer's Purchase Credit
130.332	Automatic Vending Machines that Dispense Hot Food or Beverages
130.335	Pollution Control Facilities
130.340	Rolling Stock
130.345	Oil Field Exploration, Drilling and Production Equipment
130.350	Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment
130.351	Aggregate Manufacturing

## SUBPART D: GROSS RECEIPTS

Section	
130.701	

## DEPARTMENT OF REVENUE

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## Meaning of Gross Receipts

Section	
130.401	How to Avoid Paying Tax on State or Local Tax Passed on to the Purchaser
130.405	Cost of Doing Business Not Deductible
130.410	Transportation and Delivery Charges
130.415	Finance or Interest Charges--Penalties--Discounts
130.420	Traded-In Property
130.425	Deposit or Prepayment on Purchase Price
130.430	State and Local Taxes Other Than Retailers' Occupation Tax
130.435	Penalties
130.440	Federal Taxes
130.445	Installation, Alteration and Special Service Charges
130.450	Motor Vehicle Leasing and Trade-In Allowances
130.455	

## SUBPART E: RETURNS

Section	
130.501	Monthly Tax Returns--When Due--Contents
130.502	Quarterly Tax Returns
130.505	Returns and How to Prepare
130.510	Annual Tax Returns
130.515	First Return
130.520	Final Returns When Business is Discontinued
130.525	Who May Sign Returns
130.530	Returns Covering More Than One Location Under Same Registration--Separate Returns for Separately Registered Locations
130.535	Payment of the Tax, Including Quarter Monthly Payments in Certain Instances
130.540	Returns on a Transaction by Transaction Basis
130.545	Registrants Must File a Return for Every Return Period
130.550	Filing of Returns for Retailers by Suppliers Under Certain Circumstances
130.551	Prepayment of Retailers' Occupation Tax on Motor Fuel
130.555	Vending Machine Information Returns
130.560	Verification of Returns

## SUBPART F: INTERSTATE COMMERCE

Section	
130.601	Preliminary Comments
130.605	Sales of Property Originating in Illinois
130.610	Sales of Property Originating in Other States

## SUBPART G: CERTIFICATE OF REGISTRATION

Section	
130.701	General Information on Obtaining a Certificate of Registration

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

130.705 Procedure in Disputed Cases Involving Financial Responsibility Requirements

130.710 Procedure When Security Must be Forfeited

130.715 Sub-Certificates of Registration

130.720 Separate Registrations for Different Places of Business of Same Taxpayer Under Some Circumstances

130.725 Display

130.730 Replacement of Certificate

130.735 Certificate Not Transferable

130.740 Certificate Required For Mobile Vending Units

130.745 Revocation of Certificate

## SUBPART H: BOOKS AND RECORDS

Section

130.801 General Requirements

130.805 What Records Constitute Minimum Requirement

130.810 Records Required to Support Deductions

130.815 Preservation and Retention of Records

130.820 Preservation of Books During Pendency of Assessment Proceedings

130.825 Department Authorization to Destroy Records Sooner Than Would Otherwise be Permissible

## SUBPART I: PENALTIES AND INTEREST

Section

130.901 Civil Penalties

130.905 Interest

130.910 Criminal Penalties

## SUBPART J: BINDING OPINIONS

Section

130.1001 When Opinions from the Department are Binding

## SUBPART K: SELLERS LOCATED ON, OR SHIPPING TO, FEDERAL AREAS

Section

130.1101 Definition of Federal Area

130.1105 When Deliveries on Federal Areas Are Taxable

130.1110 No Distinction Between Deliveries on Federal Areas and Illinois Deliveries Outside Federal Areas

## SUBPART L: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

Section

130.1201 General Information

130.1205 Due Date that Falls on Saturday, Sunday or a Holiday

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

## SUBPART M: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

Section

130.1301 When Lessee of Premises Must File Return for Leased Department

130.1305 When Lessor of Premises Should File Return for Leased Department

130.1310 Meaning of "Lessor" and "Lessee" in this Regulation

## SUBPART N: SALES FOR RESALE

Section

130.1401 Seller's Responsibility to Determine the Character of the Sale at the Time of the Sale

130.1405 Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale

130.1410 Requirements for Certificates of Resale (Repealed)

130.1415 Resale Number--When Required and How Obtained

130.1420 Blanket Certificate of Resale (Repealed)

## SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section

130.1501 Claims for Credit--Limitations--Procedure

130.1505 Disposition of Credit Memoranda by Holders Thereof

130.1510 Refunds

130.1515 Interest

## SUBPART P: PROCEDURE TO BE FOLLOWED UPON SELLING OUT OR DISCONTINUING BUSINESS

Section

130.1601 When Returns are Required After a Business is Discontinued

130.1605 When Returns Are Not Required After Discontinuation of a Business

130.1610 Cross Reference to Bulk Sales Regulation

## SUBPART Q: NOTICE OF SALES OF GOODS IN BULK

Section

130.1701 Bulk Sales: Notices of Sales of Business Assets

## SUBPART R: POWER OF ATTORNEY

Section

130.1801 When Powers of Attorney May be Given

130.1805 Filing of Power of Attorney With Department

130.1810 Filing of Papers by Agent Under Power of Attorney

## SUBPART S: SPECIFIC APPLICATIONS

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

Section	
130.1901	Addition Agents to Plating Baths
130.1901	Agricultural Producers
130.1905	Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage Stamps and Like Articles
130.1910	Auctioneers and Agents
130.1915	Barbers and Beauty Shop Operators
130.1920	Blacksmiths
130.1925	Chiropractists, Osteopaths and Chiropractors
130.1930	Computer Software
130.1935	Construction Contractors and Real Estate Developers
130.1940	Co-operative Associations.
130.1945	Dentists
130.1950	Enterprise Zones
130.1951	Sales of Building Materials to a High Impact Business
130.1952	Farm Chemicals
130.1955	Finance Companies and Other Lending Agencies -- Installment Contracts -- Bad Debts
130.1960	Florists and Nurserymen
130.1965	Hatcheries
130.1970	Hatcheries
130.1971	Sellers of Pets and the Like
130.1975	Operators of Games of Chance and Their Suppliers
130.1980	Optometrists and Opticians
130.1985	Pawnbrokers
130.1990	Peddlers, Hawkers and Itinerant Vendors
130.1995	Personalizing Tangible Personal Property
130.2000	Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers
130.2005	Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons
130.2006	Sales by Teacher-Sponsored Student Organizations
130.2007	Exemption Identification Numbers
130.2008	Sales by Nonprofit Service Enterprises
130.2009	Personal Property Purchased Through Certain Fundraising Events for the Benefit of Certain Schools
130.2010	Persons Who Rent or Lease the Use of Tangible Personal Property to Others
130.2011	Sales to Persons Who Lease Tangible Personal Property to Exempt Hospitals
130.2012	Sales to Persons Who Lease Tangible Personal Property to Governmental Bodies
130.2015	Persons Who Repair or Otherwise Service Tangible Personal Property
130.2020	Physicians and Surgeons
130.2025	Picture-Framers
130.2030	Public Amusement Places
130.2035	Registered Pharmacists and Druggists
130.2040	Retailers of Clothing
130.2045	Retailers on Premises of the Illinois State Fair, County Fairs, Art

## DEPARTMENT OF REVENUE

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130.2050	Shows, Flea Markets and the Like
130.2050	Sales and Gifts By Employers to Employees
130.2055	Sales by Governmental Bodies
130.2060	Sales of Alcoholic Beverages, Motor Fuel and Tobacco Products
130.2065	Sales of Automobiles for Use In Demonstration (Repealed)
130.2070	Sales of Containers, Wrapping and Packing Materials and Related Products
130.2075	Sales To Construction Contractors, Real Estate Developers and Speculative Builders
130.2080	Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel
130.2085	Sales to or by Banks, Savings and Loan Associations and Credit Unions
130.2090	Sales to Railroad Companies
130.2095	Sellers of Gasohol, Coal, Coke, Fuel Oil and Other Combustibles
130.2100	Sellers of Feeds and Breeding Livestock
130.2105	Sellers of Newspapers, Magazines, Books, Sheet Music and Musical Recordings <u>Phonograph--Records</u> , and Their Suppliers; <u>Transfers of Data Downloaded Electronically</u>
130.2110	Sellers of Seeds and Fertilizer
130.2115	Sellers of Machinery, Tools and Special Order Items
130.2120	Suppliers of Persons Engaged in Service Occupations and Professions
130.2125	Trading Stamps and Discount Coupons
130.2130	Undertakers and Funeral Directors
130.2135	Vending Machines
130.2140	Vendors of Curtains, Slip Covers, Floor Covering and Other Similar Items Made to Order
130.2145	Vendors of Meals
130.2150	Vendors of Memorial Stones and Monuments
130.2155	Vendors of Signs
130.2156	Vendors of Steam
130.2160	Vendors of Tangible Personal Property Employed for Premiums, Advertising, Prizes, Etc.
130.2165	Veterinarians
130.2170	Warehousemen

## ILLUSTRATION A Examples of Tax Exemption Cards

**AUTHORITY:** Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Section 2505-25 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-25].

**SOURCE:** Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979;



## DEPARTMENT OF REVENUE

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amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994; amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568, effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997; amended at 22 Ill. Reg. 3097, effective January 27, 1998; amended at 22 Ill. Reg. 11874, effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29, 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713, effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000; amended at 24 Ill. Reg. 18376, effective December 1, 2000; amended at 25 Ill.

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART S: SPECIFIC APPLICATIONS

**Section 130.2105 Sellers of Newspapers, Magazines, Books, Sheet Music and Musical Recordings Phonograph-Records, and Their Suppliers; Transfers of Data Downloaded Electronically**

- a) Sellers of Newspapers, Magazines, Books, Sheet Music and Musical Recordings Phonograph-Records
- 1) Sellers of books, sheet music and musical recordings, including phonograph records, incur Retailers' Occupation Tax liability when they sell any of these items to purchasers for use or consumption and not for resale.

- 2) Sales of newspapers and magazines are not subject to the tax because of the newsprint and ink exemption (see Section 1 of the Act). In determining whether a publication qualifies as a magazine for the purpose of the newsprint and ink exemption, there is one test that must be met and several other factors to be considered. The test that must be met for a publication to qualify as a magazine is that it must be published periodically in the form of newsprint and ink. Periodically means at least two times per year. The other factors to be considered are whether a member of the public can subscribe to the publication, whether the publication is one that has the basic format of a magazine, including soft covers, individual pages and indexed articles, whether it contains articles and items that have value to the general public rather than to a specialized class of people, and whether it contains general advertising. A publication that has one or more of these characteristics would be considered to be a magazine, assuming the initial test of periodic publication is met. Tangible personal property that conveys news by media other than newsprint and ink does not qualify for the exemption because Section 1 of the Retailers' Occupation Tax Act limits the exemption to news and information conveyed only by means of newsprint and ink. For example, the exemption does not extend to the transfer of news by film, microfilm or CD-Rom discs.

- 3) Information or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, does not constitute the transfer of tangible personal property. These types of transactions represent the transfer of intangibles and are thus not subject to Retailers' Occupation and Use Tax. However, downloads of canned software, as defined more fully in Section 130.1935 of this Part, are subject to Retailers' Occupation and Use Tax.

- 4) Sales by exclusively religious, charitable or educational organizations of books or other items containing such

## DEPARTMENT OF REVENUE

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organizations' own individualized literature which cannot be bought from persons who are engaged in business are not subject to the Retailers' Occupation Tax even if such sales are made to the public because such sales are not competitive with retailers.

- 54) Sales of school books by schools to their students are not considered to be sales that are made "primarily for the purposes of" the school and so are subject to the Retailers' Occupation Tax.

b) Suppliers of Persons Who Sell Newspapers, Magazines, Books, Sheet Music and Musical Recordings **Phonograph-Records**

- 1) Use or Consumption  
Persons who engage in selling equipment and supplies and other tangible personal property, to purchasers who sell newspapers, magazines, books, sheet music or musical recordings, including phonograph records, and who retain and use or consume such equipment and supplies, are engaged in the business of selling tangible personal property to purchasers for use or consumption and incur Retailers' Occupation Tax liability when making such sales. However, the proceeds from the sale of graphic arts machinery and equipment, including repair and replacement parts therefor, both new and used, including that manufactured on special order or purchased for lease, certified by the purchaser to be used primarily for graphic arts production, are not subject to the tax.

2) Resale

- A) However, suppliers of persons who sell newspapers, magazines, books, sheet music or musical recordings, including phonograph records, do not incur Retailers' Occupation Tax liability when selling tangible personal property to such persons for resale.

- B) This latter class of sales includes sales of paper stock, ink, glue, brads, binding tape, staples, phonograph record blanks and other tangible personal property, where such tangible personal property is purchased by persons who sell newspapers, magazines, books, sheet music or musical recordings, including phonograph records, and is incorporated physically by them, as ingredients or constituents, into newspapers, magazines, books, sheet music or phonograph records which they sell to others.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Administrative Citations

- 2) Code Citation: 35 Ill. Adm. Code 108

- 3) Section Numbers: Adopted Action:

108.100	New Section
108.102	New Section
108.104	New Section
108.200	New Section
108.202	New Section
108.204	New Section
108.206	New Section
108.208	New Section
108.300	New Section
108.400	New Section
108.402	New Section
108.404	New Section
108.406	New Section
108.500	New Section
108.502	New Section
108.504	New Section
108.506	New Section

- 4) Statutory Authority: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 31.1, and 42(b)(4) of the Act [415 ILCS 5/21(o), 21(p), 31.1, and 42(b)(4)]

- 5) Effective Date of Rules: January 1, 2001

- 6) Does this rulemaking contain an automatic repeal date? No

- 7) Do these rules contain incorporations by reference? No

- 8) The adopted rules, including any material incorporated by reference, are on file in the Board's Chicago office and are available for public inspection.

- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5173

- 10) Has JCAR issued a Statement of Objection to these rules? No

- 11) Differences between proposal and final version: In addition to technical changes and clarifications to this Part, the Board modified Section 108.202(b) to require that administrative citations include information on potential liability for hearing costs. In addition, to more clearly reflect recent changes in statutory penalty amounts (see 415 ILCS

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

5/42(b)(4) and (4-5) (1998)), the Board amended Section 108.500.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes

13) Will these rules replace emergency rules currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: For the first time, the Board establishes procedural rules that specifically address appeals of administrative citations. The issuance and appeal of administrative citations are addressed in Sections 31.1 and 42(b)(4) and (4-5) of the Act (415 ILCS 5/31.1, 42(b)(4), and (4-5) (1998)).

Under the Act, the Agency may issue administrative citations. The Agency also may delegate its administrative citation authority to a unit of local government, which then may issue administrative citations. The Board requires that units of local government file these delegation agreements annually with the Board. The Board also provides what the administrative citation must contain.

Subpart B also addresses requirements for filing a petition with the Board to contest an administrative citation, and what the petition must contain.

Subpart C addresses Board hearings and Subpart D addresses Board decisions.

Subpart E contains provisions on civil penalties, as well as the hearing costs of the Board, the Agency, and the delegated unit of local government. At the beginning of each fiscal year, the Board will make available, in its offices and on its Web site, a schedule of the Board's hearing costs for administrative citations. See Section 108.504.

A more detailed discussion of these proposed rules is contained in the Board's opinion and order in R00-20, which the Board adopted on December 21, 2000. The opinion and order are available from the Board's Chicago office and on the Board's Web site.

16) Information and questions regarding these adopted rules shall be directed

to: Carol Sudman  
PCB (217) 524-8509  
600 S. Second St., Ste. 402  
Springfield, Illinois 62701

The opinion and order for this rule (R00-20) are available on the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). For copies please contact:

Dorothy Gunn, Clerk  
PCB (217) 814-3620

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

The full text of the adopted rules begins on the next page:

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

## PART 108

## ADMINISTRATIVE CITATIONS

## SUBPART A: GENERAL PROVISIONS

Section  
108.100 Applicability  
108.102 Severability  
108.104 Definitions

## SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

Section  
108.200 Administrative Citation Issuance  
108.202 Service of Citation/Filing of Citation with the Board  
108.204 Filing Requirements for Petition to Contest  
108.206 Petition Contents  
108.208 AC Recipient's Voluntary Withdrawal

## SUBPART C: HEARINGS

Section  
108.300 Authorization of Hearing

## SUBPART D: BOARD DECISIONS

Section  
108.400 Burden of Proof  
108.402 Dismissal  
108.404 Default  
108.406 Non-Contested Citations

## SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section  
108.500 Penalties and Costs  
108.502 Claimed Costs of Agency or Delegated Unit  
108.504 Board Costs  
108.506 Response to Claimed Costs and Reply

**AUTHORITY:** Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 31.1, and 42(b)(4) of the Act [415 ILCS 5/21(o), 21(p), 31.1, and 42(b)(4)].

## POLLUTION CONTROL BOARD

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SOURCE: Adopted in R00-20 at 25 Ill. Reg. 897<sup>2</sup>, effective  
JAN 01 2001.

## SUBPART A: GENERAL PROVISIONS

## Section 108.100 Applicability

- a) This Part applies to proceedings before the Board concerning petitions to contest the issuance of an administrative citation pursuant to Section 31.1 of the Act.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101 which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and this Part, the provisions of this Part will apply.

## Section 108.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, the adjudication will not affect the validity of this Part as a whole or of any portion not adjudged invalid.

## Section 108.104 Definitions

For the purpose of this Part, words and terms will have the meanings as defined in 35 Ill. Adm. Code 101. Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

## SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

## Section 108.200 Administrative Citation Issuance

An administrative citation (AC) may be issued by either of the following:

- a) Illinois Environmental Protection Agency (Agency). The Agency may issue an AC pursuant to Section 31.1 of the Act.
- b) Delegated Unit of Local Government (Delegated Unit). Pursuant to Section 4(r) of the Act, the Agency may by agreement delegate its AC authority to a unit of local government which may then issue an AC. All Delegated Units must submit to the Clerk of the Board a copy of the delegation agreement on or before July 1 of every year.

## Section 108.202 Service of Citation/Filing of Citation with the Board

- a) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person (AC Recipient) believed, through direct observation, to have violated subsection (o) or (p) of Section 21 of the Act
- b) The AC must be issued and served upon the AC Recipient not more than



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60 days after the date of the observed violation and must contain the following information:

- 1) A statement specifying the provisions of subsection (o) or (p) of Section 21 of the Act that the AC Recipient was observed to have violated;
  - 2) A copy of the inspection report in which the Agency or Delegated Unit recorded the violation, which report must include the date and time of inspection, and weather conditions prevailing during the inspection;
  - 3) The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for the violations;
  - 4) An affidavit by the personnel observing the violation, attesting to their material actions and observations; and
  - 5) Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC, and if an appeal is filed and the Board finds a violation, the AC Recipient must pay hearing costs pursuant to Section 108.500 of this Part.
- c) As required by Section 31.1 of the Act, the Agency or Delegated Unit must file the AC with the Board no later than 10 days after the date of service upon the AC Recipient.

**Section 108.204 Filing Requirements for Petition to Contest**

- a) Who May File. The AC Recipient may file with the Board a petition to contest the AC. The AC Recipient must be named as the respondent and the Agency or Delegated Unit must be named as the complainant in accordance with Section 31.1(d)(2) of the Act.
- b) Time to File. The petition to contest must be filed with the Board within 35 days after the date of the service of the AC as required by Section 31.1(d)(1) of the Act.
- c) Additional Requirements. Additional filing and service requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.

**Section 108.206 Petition Contents**

A formal petition to contest must include any reasons why the AC Recipient believes the AC was improperly issued, including:

- a) The AC Recipient does not own the property;
- b) The AC Recipient did not cause or allow the alleged violations;
- c) The AC was not timely filed or properly served; or
- d) The alleged violation was the result of uncontrollable circumstances.

**Section 108.208 AC Recipient's Voluntary Withdrawal**

The AC Recipient may, at any time before entry of the Board decision, withdraw its petition to contest. It must do so in writing or orally on the record at hearing. If an AC Recipient withdraws its petition to contest, the Board will

## POLLUTION CONTROL BOARD

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adopt an order in accordance with Section 108.406 of this Part.

## SUBPART C: HEARINGS

**Section 108.300 Authorization of Hearing**

- a) The hearing date will be set within 60 days after the filing of the petition to contest unless the hearing officer orders otherwise to prevent material prejudice.
- b) The hearing officer will give the parties at least 21 days written notice of the hearing in accordance with Section 31.1(d) of the Act.
- c) The hearing will be held in accordance with 35 Ill. Adm. Code 101.Subpart F.
- d) The hearing will be held at a time and location consistent with the Board's resources as designated by the hearing officer.

## SUBPART D: BOARD DECISIONS

**Section 108.400 Burden of Proof**

The burden of proof is on the Agency or Delegated Unit.

**Section 108.402 Dismissal**

The Board may issue an order dismissing the AC and closing the docket upon its own motion or a motion by the AC Recipient, Agency or Delegated Unit if the AC was not timely and properly served pursuant to Section 31.1 of the Act and Section 108.200 of this Part.

**Section 108.404 Default**

Failure of a party to appear at the hearing, or failure to proceed as ordered by the Board or hearing officer, may constitute default. Upon default the Board will issue an order against the defaulting party.

**Section 108.406 Non-Contested Citations**

The Board will consider the AC non-contested if the AC Recipient does not file a petition to contest, fails to timely file a petition to contest, or withdraws its petition to contest pursuant to Section 108.208. If the AC is non-contested prior to hearing, the Board will adopt a final order in accordance with Section 108.500(a). If the AC Recipient withdraws its petition to contest after the hearing starts, the Board will adopt a final order in accordance with Section 108.500(c) of this Part.

## SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

**Section 108.500 Penalties and Costs**

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

The Board will impose penalties and assess costs as follows:

- a) If the AC is defaulted or non-contested as set forth in Section 108.404 or 108.406 of this Part, respectively, the Board will do the following:
  - 1) Impose on the AC Recipient found to have violated Section 21(o) of the Act a \$500 penalty for each violation; and
  - 2) Impose on the AC Recipient found to have violated Section 21(p) of the Act a \$1,500 penalty for a first offense and a \$3,000 penalty for a second or subsequent offense.
- b) If the AC Recipient contests the AC and the Board finds, based on the record, that the violation occurred and that the AC Recipient has not shown that the violation resulted from uncontrollable circumstances, the Board will do the following:
  - 1) Impose on the AC Recipient found to have violated Section 21(o) of the Act a \$500 penalty for each violation;
  - 2) Impose on the AC Recipient found to have violated Section 21(p) of the Act a \$1,500 penalty for a first offense and a \$3,000 penalty for a second or subsequent offense; and
  - 3) Assess the AC Recipient found to have violated Section 21(o) or (p) of the Act associated hearing costs pursuant to Sections 108.502 and 108.504 of this Subpart.
- c) If the AC Recipient contests the AC but voluntarily withdraws the petition for review pursuant to Section 108.208 of this Part after the hearing starts, the Board will do the following:
  - 1) Impose on the AC Recipient found to have violated Section 21(o) of the Act a \$500 penalty for each violation;
  - 2) Impose on the AC Recipient found to have violated Section 21(p) of the Act a \$1,500 penalty for a first offense and a \$3,000 penalty for a second or subsequent offense; and
  - 3) Assess the AC Recipient found to have violated Section 21(o) or (p) of the Act associated hearing costs pursuant to Sections 108.502 and 108.504 of this Subpart.

**Section 108.502 Claimed Costs of Agency or Delegated Unit**

Within 30 days after the close of the hearing or as otherwise directed by the hearing officer, the Agency or Delegated Unit must submit to the Clerk of the Board and serve on all parties an itemized listing of the costs associated with the hearing. The costs must not include attorney's fees or witness fees for persons employed by the Agency or Delegated Unit.

**Section 108.504 Board Costs**

At the beginning of every fiscal year the Board will place on file a schedule of hearing costs for AC cases. The schedule will include a per day breakdown of the Board's costs for holding a hearing. A copy will be available at the Board's offices and on the Board's Web site.

## POLLUTION CONTROL BOARD

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**Section 108.506 Response to Claimed Costs and Reply**

- a) The AC Recipient may challenge the claimed costs submitted by the Agency, Delegated Unit, or the Board by filing a response. The response must be filed within 21 days after the service of the claimed costs and must be served on all parties.
- b) The Agency or Delegated Unit may file a reply to the AC Recipient's response to claimed costs within 14 days after the service of the response.
- c) The Board may hold an evidentiary hearing on hearing costs.

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

1) Heading of the Part: Appeals of Final Decisions of State Agencies2) Code Citation: 35 Ill. Adm. Code 1053) Section Numbers: Adopted Action:

105.100 New Section  
 105.102 New Section  
 105.104 New Section  
 105.106 New Section  
 105.108 New Section  
 105.110 New Section  
 105.112 New Section  
 105.114 New Section  
 105.116 New Section  
 105.118 New Section  
 105.200 New Section  
 105.202 New Section  
 105.204 New Section  
 105.206 New Section  
 105.208 New Section  
 105.210 New Section  
 105.212 New Section  
 105.214 New Section  
 105.300 New Section  
 105.302 New Section  
 105.304 New Section  
 105.400 New Section  
 105.402 New Section  
 105.404 New Section  
 105.406 New Section  
 105.408 New Section  
 105.410 New Section  
 105.412 New Section  
 105.500 New Section  
 105.502 New Section  
 105.504 New Section  
 105.506 New Section  
 105.508 New Section  
 105.510 New Section  
 APPENDIX A New Section  
 APPENDIX B New Section

4) Statutory Authority: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 5, 39, 39.5, 40, 40.1, 40.2, and 57 of the Act [415 ILCS 5/5, 39, 39.5, 40, 40.1, 40.2 and 57].5) Effective Date of Rules: January 1, 2001

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6) Does this rulemaking contain an automatic repeal date? No7) Do these rules contain incorporations by reference? No8) The adopted rules, including any material incorporated by reference, are on file in the Board's Chicago office and are available for public inspection.9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 547310) Has JCAR issued a Statement of Objection to these rules?: No11) Differences between proposal and final version: The Board made technical changes and clarifications to this Part, but no significant substantive changes were made. At the request of public comment, the Board included language from existing rules which requires the Board to hold a new hearing on evidence introduced with respect to any disputed issue of fact. The Board deleted proposed Subpart F (Appeals of Other Final Decisions of State Agencies) due to confusion among commenters.12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter? Yes13) Will these rules replace emergency rules currently in effect? No14) Are there any amendments pending on this Part? No15) Summary and Purpose of Rules: Part 105 covers Board review of final decisions of the Agency under various programs and final decisions of the OSFM with respect to the Underground Storage Tank (UST) Fund. It contains provisions on petitions for review, filing agency decision records, and hearings.

The Board has procedures for appeals of OSFM Underground Storage Tank (UST) Fund decisions. See 35 Ill. Adm. Code 107. For the first time, however, the Board establishes specific procedural rules for appeals of Agency leaking underground storage tank (LUST) decisions. See Part 105-Subpart D. Consistent with Section 40(e) of the Act (415 ILCS 5/40(e) (1998)), the Board provides for third-party appeals of National Pollutant Discharge Elimination System (NPDES) permit decisions. See Section 105.204(b). The Board also provides for appeal of an Agency decision to terminate an Environmental Management System Agreement (EMSA) under Section 52.3-4(b) of the Act (415 ILCS 5/52.3-4(b) (1998)).

A more detailed discussion of these proposed rules is contained in the Board's opinion and order in R00-20, which the Board adopted on December 21, 2000. The opinion and order are available from the Board's Chicago

## POLLUTION CONTROL BOARD

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office and on the Board's Web site.

- 16) Information and questions regarding these adopted rules shall be directed to:

Carol Sudman

PCB

600 S. Second St., Ste. 402

Springfield, Illinois 62701

(217) 524-8509

The opinion and order for this rule (R00-20) are available on the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). For copies please contact:

Dorothy Gunn, Clerk

PCB

100 W. Randolph St., Suite 11-500

Chicago, IL 60601

(312) 814-3620

The full text of the adopted rules begins on the next page:

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

## TITLE 35: ENVIRONMENTAL PROTECTION

## SUBTITLE A: GENERAL PROVISIONS

## CHAPTER I: POLLUTION CONTROL BOARD

## PART 105

## APPEALS OF FINAL DECISIONS OF STATE AGENCIES

## SUBPART A: GENERAL PROVISIONS

Section	Applicability
105.100	Severability
105.102	Definitions
105.104	Computation of Time, Filing and Service Requirements
105.106	Dismissal of Petition
105.108	Hearing Process
105.110	Burden of Proof
105.112	Calculation of Decision Deadline
105.114	Record Filing
105.116	Sanctions for Untimely Filing of the Record
105.118	

## SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL DECISIONS OF THE AGENCY

Section	Applicability
105.200	Parties
105.202	Who May File a Petition for Review
105.204	Time to File the Petition or Request for Extension
105.206	Extension of Time to File a Petition for Review
105.208	Petition Content Requirements
105.210	Agency Record
105.212	Board Hearing
105.214	

## SUBPART C: CAAPP PERMIT APPEALS

Section	Applicability
105.300	General Requirements
105.302	Petition Content Requirements
105.304	

## SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND STORAGE TANK (LUST) DECISIONS

Section	Parties
105.400	Who May File a Petition for Review
105.402	Time for Filing the Petition
105.404	



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105.406 Extension of Time to File a Petition for Review  
 105.408 Petition Content Requirements  
 105.410 Agency Record  
 105.412 Board Hearing

## SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section  
 105.500 Applicability  
 105.502 General Overview  
 105.504 General Requirements  
 105.506 Petition Content Requirements  
 105.508 OSFM Record and Appearance  
 105.510 Location of Hearing

APPENDIX A Agency LUST Final Decisions that are Reviewable  
 APPENDIX B Comparison of Former and Current Rules

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 5, 39, 39.5, 40, 40.1, 40.2, and 57 of the Act [415 ILCS 5/5, 39, 39.5, 40, 40.1, 40.2 and 57].

SOURCE: Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41, effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R93-24 at 18 Ill. Reg. 4244, effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994; old Part repealed, new Part adopted in R90-20 at 25 Ill. Reg. 406, effective January 1, 1990.

## SUBPART A: GENERAL PROVISIONS

## Section 105.100 Applicability

- This Part applies to appeals of final decisions of the Agency and the OSFM to the Board as described in this Part.
- This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

## Section 105.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, the adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

## Section 105.104 Definitions

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For the purpose of this Part, words and terms will have the meanings as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

## Section 105.106 Computation of Time, Filing and Service Requirements

Unless this Part provides otherwise, service, filing, and computation of time must be in accordance with 35 Ill. Adm. Code 101.Subpart C.

## Section 105.108 Dismissal of Petition

A petition is subject to dismissal if the Board determines that:

- The petition does not contain the informational requirements set forth in Section 105.210, 105.304, 105.408 or 105.506 of this Part;
- The petition is untimely pursuant to Section 105.206, 105.302, 105.404 or 105.504 of this Part;
- The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information;
- The petitioner does not have standing under applicable law to petition the Board for review of the State agency's final decision; or
- Other grounds exist that bar the petitioner from proceeding.

## Section 105.110 Hearing Process

Unless this Part provides otherwise, proceedings held pursuant to this Part will be in accordance with the rules set forth in 35 Ill. Adm. Code 101.Subpart F.

## Section 105.112 Burden of Proof

Unless this Part provides otherwise:

- The burden of proof shall be on the petitioner except as provided in subsection (b) of this Section [415 ILCS 5/40(a)(1), 40(b) and (e)(3) and 40.2(a)].
- The burden of proof is on the Agency if the Agency issues an NPDES permit that imposes limits which are based upon a criterion or denies a permit based upon application of a criterion, then the Agency shall have the burden of going forward with the basis for the derivation of those limits or criterion which were derived under the Board's rules. [415 ILCS 5/40(a)(1)]

## Section 105.114 Calculation of Decision Deadline

The Board will render its final decision on the petition within any applicable decision period (which commences when the petition is filed in accordance with 35 Ill. Adm. Code 101.300(b)(4)), except:

- When the petitioner waives its right to a decision within the

## POLLUTION CONTROL BOARD

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- prescribed decision period in accordance with 35 Ill. Adm. Code 101.Subpart C; or
- b) When the petitioner files an amended petition, the decision period recommences when the amended petition is filed in accordance with 35 Ill. Adm. Code 101.300(b)(4).

**Section 105.116 Record Filing**

The State agency must file with the Board the entire record of its decision within 30 days after the filing of the petition for review, unless this Part provides otherwise, or the Board or hearing officer orders a different filing date. If the State agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed.

**Section 105.118 Sanctions for Untimely Filing of the Record**

If the State agency unreasonably fails to timely file the record on or before the date required under this Part, the Board may sanction the State agency in accordance with 35 Ill. Adm. Code 101.Subpart H.

## SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL DECISIONS OF THE AGENCY

**Section 105.200 Applicability**

This Subpart applies to any appeal to the Board of the Agency's final permit decisions and other final decisions of the Agency, except:

- a) When the appeal is of a final CAAPP decision of the Agency, which is addressed in Subpart C of this Part; and
- b) When the appeal is of a final leaking underground storage tank decision of the Agency, which is addressed in Subpart D of this Part.

**Section 105.202 Parties**

- a) **Petitioner.** The person who files a petition for review of the Agency's final decision must be named the petitioner.
- b) **Respondent(s).** The Agency must be named the respondent. If a petition is filed pursuant to Section 105.204(b), (c) or (d) by a person other than the permit applicant, the permit applicant must be named as a respondent in addition to the Agency.

**Section 105.204 Who May File a Petition for Review**

- a) **General.** If the Agency refuses to grant or grants with conditions a permit under Section 39 of the Act, the applicant may petition for a hearing before the Board to contest the decision of the Agency. [415 ILCS 5/40(a)(1)]

## POLLUTION CONTROL BOARD

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- b) National Pollutant Discharge Elimination System (NPDES) Permit. If the Agency grants or denies a permit under subsection (b) of Section 39 of the Act, a third party, other than the permit applicant or Agency, may petition the Board for a hearing to contest the decision of the Agency [415 ILCS 5/40(e)(1)].
- c) Resource Conservation and Recovery Act (RCRA) Permit for a Hazardous Waste Disposal Site. If the Agency grants a RCRA permit for a hazardous waste disposal site, a third party, other than the permit applicant or Agency, may petition the Board for a hearing to contest the issuance of the permit. This subsection does not apply to the granting of permits issued for the disposal or utilization of sludge from publicly-owned sewage works. [415 ILCS 5/40(b)]
- d) Hazardous Waste Permit. Any party to an Agency proceeding conducted pursuant to Section 39.3 of the Act may petition as of right to the Board for review of the Agency's decision. [415 ILCS 5/40(c)]
- e) EMSAs. If the Agency terminates an EMSA under Section 52.3-4(b) of the Act, the sponsor may petition the Board for review of the Agency's final decision.
- f) Other Agency Final Decisions. If the Agency's final decision is to deny or to conditionally grant or approve, the person who applied for or otherwise requested the Agency decision, or the person to whom the Agency directs its final decision, may petition the Board for review of the Agency's final decision. In addition, any third party authorized by law to appeal a final decision of the Agency to the Board may file a petition for review with the Clerk.

**Section 105.206 Time to File the Petition or Request for Extension**

- a) Except as provided in subsection (b) of this Section, if a person who may petition the Board under Section 105.204 of this Subpart wishes to appeal the Agency's final decision to the Board under this Subpart, the person must file the petition with the Clerk within 35 days after the date of service of the Agency's final decision.
- b) If a person with standing as described in Section 105.204(d) of this Subpart, or any third party who is authorized by law to appeal a final decision of the Agency to the Board, wishes to appeal the Agency's final decision to the Board under this Subpart, the person must file a petition for review with the Clerk within 35 days after the date of issuance of the Agency's final decision.
- c) Except as provided in subsection (d) of this Section, if a person who may petition the Board under Section 105.204 of this Subpart wishes to request an extension of time to file a petition for review pursuant to Section 105.208(a) of this Subpart, the person must file the request within 35 days after the date of service of the Agency's final decision.
- d) If a person with standing as described in Section 105.204(d), or any third party who is authorized by law to appeal a final decision of the Agency to the Board, wishes to request an extension of time to file a

## POLLUTION CONTROL BOARD

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petition for review pursuant to Section 105.208(b) of this Subpart, the person must file the request within 35 days after the date of issuance of the Agency's final decision.

**Section 105.208 Extension of Time to File a Petition for Review**

a) Permit or Other Agency Final Decision. For appeals pursuant to Section 40(a)(1) of the Act, the 35-day period described in Section 105.206(a) of this Subpart for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period [415 ILCS 5/40(a)(1)].

1) The applicant and the Agency must jointly file a request for extension within 35 days after the date of service of the Agency's final decision.

2) The joint request described in subsection (a)(1) of this Section may seek an appeal period not exceeding 125 days from the date of service of the Agency's final decision to file a petition for review under this Subpart.

b) Hazardous Waste Permit. For appeals pursuant to Section 40(c) of the Act, the 35-day period described in Section 105.206(b) of this Subpart for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. If another person with standing to appeal a hazardous waste disposal permit wishes to obtain an extension, there must be a written notice provided to the Board by that person, the Agency, and the applicant, within the initial appeal period. [415 ILCS 5/40(c)]

1) If the applicant is the petitioner, the applicant and the Agency must jointly file a request for extension within 35 days after the date of issuance of the Agency's final decision.

2) If a person with standing other than the applicant is the petitioner, the Agency, the applicant and the other person must jointly file a request for extension within 35 days after the date of issuance of the Agency's final decision.

3) The joint request described in subsection (b)(1) or (2) of this Section may seek an appeal period not exceeding 125 days from the date of issuance of the Agency's final decision to file a petition for review under this Subpart.

c) Any request for extension of time under this Section must be accompanied by written evidence that the Agency joins in the request, e.g., affidavit of the petitioner or signature of the Agency's representative.

d) Extensions of time to file petitions under Section 105.204(b), (c), or (e) of this Subpart are not available.

**Section 105.210 Petition Content Requirements**

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In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C, the petition must include:

- a) The Agency's final decision or issued permit;
- b) A statement specifying the date of issuance or service of the Agency's final decision or issued permit, as applicable pursuant to Section 105.206 of this Subpart;
- c) A statement specifying the grounds of appeal; and
- d) For petitions under Section 105.204(b) of this Subpart, a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on the NPDES permit application, if a public hearing was held, and a demonstration that the petitioner is so situated as to be affected by the permitted facility [415 ILCS 5/40(e)(2)].

**Section 105.212 Agency Record**

a) The Agency must file its entire record of its decision with the Clerk in accordance with Section 105.116 of this Part.

b) The record must include:

- 1) Any permit application or other request that resulted in the Agency's final decision;
- 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;
- 3) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;
- 4) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and
- 5) Any other information the Agency relied upon in making its final decision.

**Section 105.214 Board Hearing**

a) Except as provided in subsections (b), (c) and (d) of this Section, the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F, upon an appropriately filed petition for review under this Subpart. The hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued, unless the parties agree to supplement the record pursuant to Section 40(d) of the Act. If any party desires to introduce evidence before the Board with the respect to any disputed issue of fact, the Board will conduct a separate hearing and receive evidence with respect to the issue of fact.

b) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516.

c) The Board will not hold a hearing on a petition for review under

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Section 105.204(c) of this Subpart if the Board determines that:

- 1) The petition is duplicitous or frivolous; or
- 2) The petitioner is so located as to not be affected by the permitted facility.
- d) The Board will not hold a hearing on a petition for review under Section 105.204(b) or (d) of this Subpart if the Board determines that the petition is duplicitous or frivolous.
- e) If the Board determines to hold a hearing, the Clerk will give notice of the hearing pursuant to 35 Ill. Adm. Code 101.602.

## SUBPART C: CAAPP PERMIT APPEALS

## Section 105.300 Applicability

This Subpart applies to proceedings before the Board concerning appeals from CAAPP final determinations made pursuant to Section 39.5 of the Act.

## Section 105.302 General Requirements

- a) The definitions of 35 Ill. Adm. Code 101.202 and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise.
- b) If the Agency denies a CAAPP permit, permit modification, or permit renewal it shall provide to USEPA, the permit applicant and, upon request, affected states, any person who participated in the public comment process and any other person who could obtain judicial review under Section 40.2 and 41 of the Act a copy of each notification of denial pertaining to the permit applicant.
- c) In the case of a denial of a CAAPP permit, including a permit revision or permit renewal, or a determination of incompleteness by the Agency regarding a submitted CAAPP application, or the issuance by the Agency of a CAAPP permit with one or more conditions or limitations, or the failure of the Agency to act on an application for a CAAPP permit, permit renewal, administrative permit amendment or significant permit modification within the time frames specified in Section 39.5(5)(f) or Section 39.5(13) of the Act, as applicable, or the failure of the Agency to take final action within 90 days after receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) pursuant to Section 39.5(14) of the Act, to which the applicant, any person who participated in the public comment process pursuant to Section 39.5(8) of the Act, or any other person who could obtain judicial review pursuant to Section 41(a) of the Act objects, such persons may contest the decision of the Agency by filing with the Clerk a petition for review of the Agency's action in accordance with this Section.
- d) For purposes of this Subpart, a person who participated in the public comment process is someone who, during the public comment period,

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- e) either commented on the draft permit, submitted written comments, or requested notice of the final action on a specific permit application. The petition filed pursuant to subsection (c) of this Section must be filed within 35 days after the Agency's final permit action. Notwithstanding the above, if the petition is based solely on grounds arising after the 35 day period expires, the petition may be filed within 35 days after the new grounds for review arise. If the applicant is challenging the Agency's failure to timely take final action pursuant to Section 39.5 of the Act, the petition must be filed before the Agency takes the final action. Under no circumstances may a petition challenging the final permit action on a Phase II acid rain permit be filed more than 90 days subsequent to the final permit action.
- f) The Agency must appear as respondent at the hearing, and must file within 30 days after service of the petition, an answer consisting of the entire Agency record of the CAAPP application including the CAAPP permit application, the hearing record, the CAAPP permit denial or issuance letter, and correspondence with the applicant concerning the CAAPP permit application.
- g) The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.
- h) The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.
- i) *The Agency shall notify USEPA, in writing, of any petition for hearing brought under this Part involving a provision or denial of a Phase II acid rain permit within 30 days of the filing of the petition. USEPA may intervene as a matter of right in any such hearing. The Agency shall notify USEPA, in writing, of any determination or order in a hearing brought under this Section that interprets, voids, or otherwise relates to any portion of a Phase II acid rain permit. [415 ILCS 5/40.2(e)]*

## Section 105.304 Petition Content Requirements

- a) The petition must include:
  - 1) a concise description of the CAAPP source for which the permit is sought;
  - 2) a statement of the Agency's decision or part thereof to be reviewed;
  - 3) a justification as to why the Agency's decision or part thereof was in error; and
  - 4) the other materials upon which the petitioner relies in its petition.
- b) The petition may include a request to stay the effectiveness of a denial of the CAAPP permit until final action is taken by the Board pursuant to Section 40.2 of the Act.

SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND



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## STORAGE TANK (LUST) DECISIONS

**Section 105.400 Parties**

- a) Petitioner. The person who files a petition for review of the Agency's final decision made pursuant to Sections 57.1 et seq. of the Act (or under the former Section 22.18b(g) of the Act) must be named as petitioner.
- b) Respondent. The Agency must be named as the respondent.

**Section 105.402 Who May File a Petition for Review**

Any owner or operator may file a petition for review pursuant to Section 40 of the Act of an Agency final determination made pursuant to Sections 57.1 et seq. of the Act (or under the former Section 22.18b(g) of the Act). There are several Agency determinations that may be appealed pursuant to Section 40 of the Act. The Agency determinations that may be appealed are included in Illustration A of this Part.

**Section 105.404 Time for Filing the Petition**

Petitions must be filed in accordance with this Section or the Board does not have the authority to review the Agency's decision and will dismiss the proceeding on its own motion or on the motion of any party. Within 35 days after the date of service of the Agency's final decision the petitioner may file with the Clerk of the Board:

- a) a petition for review that contains the requirements of Section 105.408 of this Part; or
- b) a request for an extension of time to file a petition for hearing pursuant to Section 105.406 of this Part.

**Section 105.406 Extension of Time to File a Petition for Review**

Pursuant to Section 40(a)(1) of the Act, the 35-day period for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period [415 ILCS 5/40(c)]. The applicant and the Agency must jointly file a request for extension with the Board within 35 days after the date of service of the Agency's final decision. Upon an appropriately filed request for an extension, the applicant has a period not exceeding 125 days after the date of service of the Agency's final decision to file a petition for review before the Board pursuant to Section 105.408 of this Part.

**Section 105.408 Petition Content Requirements**

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must contain:

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- a) The Agency's final decision;
- b) A statement specifying the date of service of the Agency's final decision; and
- c) A statement specifying the grounds of appeal.

**Section 105.410 Agency Record**

- a) The Agency must file the entire record of its decision with the Board in accordance with Section 105.116 of this Part.
- b) The record must include:
  - 1) The plan or budget submittal or other request that requires an Agency decision;
  - 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the plan or budget submittal or other request;
  - 3) The final determination letter; and
  - 4) Any other information the Agency relied upon in making its determination.

**Section 105.412 Board Hearing**

The Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F upon an appropriately filed petition for review, unless a petition is disposed of by a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516. The hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued.

**SUBPART E: APPEAL OF OSFM LUST DECISIONS****Section 105.500 Applicability**

This Subpart applies to proceedings before the Board concerning appeals from OSFM final determinations made pursuant to Section 57.9(c) of the Act.

**Section 105.502 General Overview**

OSFM final determinations are made either through the issuance of an "Eligibility and Deductibility Determination" letter or by the failure of OSFM to act upon receipt of an "Eligibility and Deductibility Determination" form within 60 days pursuant to Section 57.9(c)(2) of the Act. The process before the Board for review of final determinations by the OSFM includes the following steps. Upon receipt of a petition for review, unless the Board determines that the petition is insufficient, a hearing date and location will be assigned. Hearings will be publicly-noticed in the county where the underground storage tank site is located. If the parties enter into a settlement agreement prior to or during the hearing process, the parties may request that the Board accept and enter a final order adopting a proposed settlement agreement; the order may be requested with or without a hearing.

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**Section 105.504 General Requirements**

- a) Who May File. Any owner or operator of an underground storage tank who has been issued an "Eligibility and Deductibility Determination" letter or who has not received an "Eligibility and Deductibility Determination" letter from the OSFM within the time prescribed by Section 57.9(c)(2) of the Act, which is deemed to be a final decision appealable to the Board, may file a petition with the Board seeking review of that final decision. The owner/operator must be named as the petitioner, and the OSFM must be named as the respondent. Filing requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.
- b) Timely Petition. The petition for review must be filed with the Board within 35 days after the date of the OSFM's "Eligibility and Deductibility Determination" letter or within 35 days from the OSFM's final decision due to its failure to act as required under Section 57.9(c)(3) of the Act. There will be a rebuttable presumption that petitioner received the OSFM's "Eligibility and Deductibility Final Determination" letter four days from the date indicated on the letter.
- c) Service and Filing. The petitioner must serve all filings upon the OSFM at the address listed in 35 Ill. Adm. Code 101.Subpart C. All filings must be accompanied by a notice of filing. Methods and proof of service, as well as the effective date of service, are governed by 35 Ill. Adm. Code 101.Subpart C.

**Section 105.506 Petition Content Requirements**

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must include:

- a) A copy of the OSFM's "Eligibility and Deductibility Final Determination" letter;
- b) A complete and precise description of the underground storage tank site, including the location of the site, including the county, the number of underground storage tanks on-site, the substance(s) stored in each tank, the date of the tank's registration; and the date of Illinois Emergency Management Agency notification;
- c) A statement specifying the date of service of the OSFM's final determination letter and documentation to demonstrate the petitioner's timely filing;
- d) A statement specifying the grounds of appeal; and
- e) If the owner or operator is represented by counsel, an appearance must be filed in conjunction with the petition.

**Section 105.508 OSFM Record and Appearance**

- a) Within 14 days after a petition for review of an OSFM eligibility or deductibility determination, the attorney representing the OSFM must file an appearance with the Board.
- b) The OSFM must file the entire record of its decision with the Board in

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accordance with Section 105.116 of this Part. The record must include:

- 1) The request for OSFM determination of eligibility or deductibility;
- 2) Correspondence with the petitioner;
- 3) The denial letter; and
- 4) Any other information the OSFM relied upon in making its determination.

**Section 105.510 Location of Hearing**

The hearing will be held in either Springfield or Chicago or in such other location as the hearing officer or the Board may designate to prevent material prejudice or undue delay. Upon the proceeding being set for hearing, the Clerk will cause notice of the hearing to be published. Public notice will be published at least 21 days before the hearing by public advertisement in a newspaper of general circulation in the county in which the LUST site in question is located.

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**Section 105.APPENDIX A Agency LUST Final Decisions that are Reviewable**

The following table includes Agency final determinations which may be appealed to the Board pursuant to the Leaking Underground Storage Tank Program, Title XVI of the Act. Appealable determinations are listed in Title XVI, so the reader should consult the Act for amendments to Title XVI which may affect this list.

Description of Final Determination	Section of the Act 35 Ill. Adm. Code Citation	Citation
Agency's determination concerning the owner's or operator's physical soil classification and groundwater investigation plan.	57.7(a)(1)(A)	732.305(a) and (c) and 732.503(b) and (f)
Agency's determination as to a request for reimbursement for costs associated with early action pursuant to Section 57.6(b) of the Act.	57.7(a)(1)(B)	732.305(b)(1) and (c) and 732.602
Agency's determination concerning the owner's or operator's budget for the physical soil classification and groundwater investigation plan.	57.7(a)(2)	732.305(b)(2) and (c) and 732.503 (b) and (f)
Agency's determination concerning the site classification.	57.7(b)	732.309, 732.500(a) and 732.503(b) and (f)
Agency's determination concerning the corrective action plan submitted for a high priority site.	57.7(c)(1)(A)	732.405(a) and 732.503(b) and (f)
Agency's determination concerning the budget associated with a corrective action plan submitted for a high priority site.	57.7(c)(1)(B)	732.405(b) and 732.503(b) and (f)
Agency's determination as to issuance of a no further remediation letter in accordance with Section 57.10 of the Act for a high priority site.	57.7(c)(1)(E)	732.410(a) and (d)

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Agency's determination concerning the groundwater monitoring plan and associated budget submitted for a low priority site.	57.7(c)(2)(B)	732.403(b) and (c) and 732.503(b) and (f)
Agency's determination associated with a groundwater monitoring completion report.	57.7(c)(2)(C)	732.403(g)
Agency's determination as to issuance of a no further remediation letter in accordance with Section 57.10 of the Act for a low priority site.	57.7(c)(2)(E)	732.403(f) and 732.410(d)
Agency's determination as to the site classification for a no further action site.	57.7(c)(3)(B)	732.402 and 732.410(d)
Agency's determination as to amount of reimbursement.	57.8(i)	732.602(h)
Agency's determination concerning the completeness of plan or budget submittals by the owner or operator.		732.502(b), 732.503(f)
Agency's determination concerning the completeness of reimbursement submittals by the owner or operator.		732.602(a) and (b)

**BOARD NOTE:** The above list was complete at time of adoption. However, the list is subject to subsequent changes in the Act, the Board's regulations and the interpretation of the corresponding law. By no means should this list be interpreted to limit any right to appeal an Agency final determination before the Board. The list should only be used as an aid for interpreting Title XVI and the corresponding law.

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**Section 105.APPENDIX B Comparison of Former and Current Rules**

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

FORMER PART 105	CURRENT SECTION
105.102	105.202
	105.204
	105.206
	105.212
105.103	105.Subpart C
	105.204

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1) Heading of the Part: Enforcement

2) Code Citation: 35 Ill. Adm. Code 103

Section Numbers:	Adopted Action:
103.100	New Section
103.102	New Section
103.104	New Section
103.106	New Section
103.200	New Section
103.202	New Section
103.204	New Section
103.206	New Section
103.208	New Section
103.210	New Section
103.212	New Section
103.300	New Section
103.302	New Section
103.304	New Section
103.306	New Section
103.400	New Section
103.402	New Section
103.404	New Section
103.406	New Section
103.408	New Section
103.410	New Section
103.412	New Section
103.414	New Section
103.416	New Section
103.500	New Section
103.502	New Section
103.504	New Section
APPENDIX A	New Section

4) Statutory Authority: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

5) Effective Date of Rules: January 1, 2001

6) Does this rulemaking contain an automatic repeal date? No

7) Do these rules contain incorporations by reference? No

8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Board's Chicago office and is available for



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public inspection.

9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5182

10) Has JCAR issued a Statement of Objection to these rules? No

11) Differences between proposal and final version: In addition to technical and changes and clarifications, the Board streamlines Section 103.206 on adding parties by deleting unnecessary provisions. For example, provisions on service, filing answers, and motion practice are better addressed elsewhere in the procedural rules. The Board also specifies that misjoinder and nonjoinder of parties with respect to enforcement proceedings are governed by Section 101.403(b).

The Board deletes the requirement that the Agency inform the person requesting an informal investigation and the Board of the results of that investigation or the Agency's decision not to investigate. Instead, the Board requires the Agency to send an acknowledgment to the Board that the Agency received the request. See Section 103.208(b). This amendment reflects current practice.

The Board deletes Section 103.300(d), which set forth requirements for a hearing if one was requested on a proposed settlement in a State-initiated enforcement proceeding. The Board adds to Section 103.300(c), however, to clarify that if the Board holds a hearing, a copy of the proposed settlement will be entered into the record.

With respect to the required contents of a proposed settlement, the Board adds language from Section 33(c) of the Act (415 ILCS 5/33(c) (1998)). See Section 103.302(c). In Section 103.414 (hearings in proceedings involving RCRA permits), the Board deletes subsections (e) and (f) because each appears elsewhere in the procedural rules. Lastly, the Board adds a new Section 103.502, which provides that the Board determines civil penalties pursuant to Section 33(c) and 42 of the Act (415 ILCS 5/33(c) and 42 (1998)).

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes

13) Will these rules replace emergency rules currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: Part 103 continues to apply to enforcement proceedings. The Board has significantly streamlined this Part by moving to Part 101 the provisions of the current 35 Ill. Adm. Code 103 that are more general and should apply to all adjudicatory proceedings.

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Section 103.204(d) codifies a major change to current practice before the Board. All material allegations of a complaint will be taken as admitted if the respondent either files no answer or files an answer that fails to specifically deny the allegations, unless the respondent asserts a lack of knowledge sufficient to form a belief. This change makes the Board's rule more consistent with Section 2-610 of the Civil Practice Law, 735 ILCS 5/2-610 (1998).

The rules now require that all notices of complaints notify the respondent of the consequences of failing to respond to the complaint and that questions should be directed to the hearing officer, the Clerk's Office, or an attorney.

The Board sets forth procedures for adding a non-party as a respondent to an enforcement proceeding when the Board cannot completely determine a controversy without the presence of the non-party. The Board may order the non-party to be added on the Board's motion or a respondent's motion. See Section 103.206(a). The Board then will grant the complainant permission to file an amended complaint that sets forth a claim against the added respondent. See Section 103.206(b).

Section 103.208 replaces a Board resolution that established an informal citizen's complaint process. See *In re Duplicious or Frivolous Determinations* (June 8, 1989), RES 89-2. The resolution will be repealed when the Board promulgates these rules.

As proposed, any person may request that the Agency conduct an informal investigation by submitting a request to the Board. This approach in many ways codifies the current informal complaint process.

A more detailed discussion of these proposed rules is contained in the Board's opinion and order in R00-20, which the Board adopted on December 21, 2000. The opinion and order are available from the Board's Chicago office and on the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

16) Information and questions regarding these adopted rules shall be directed to:

Carol Sudman  
Pollution Control Board  
600 S. Second St., Ste. 402  
Springfield, Illinois 62701  
(217) 524-8509

The opinion and order for this rule (R00-20) are available on the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). For copies please contact:

Dorothy Gunn, Clerk  
Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago IL 60601

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(312) 814-3620

The full text of the adopted rules begins on the next page:

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## TITLE 35: ENVIRONMENTAL PROTECTION

## SUBTITLE A: GENERAL PROVISIONS

## CHAPTER I: POLLUTION CONTROL BOARD

## PART 103

## ENFORCEMENT

## SUBPART A: GENERAL PROVISIONS

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103.100  
103.102  
103.104  
103.106

Applicability  
Severability  
Definitions  
General

## SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

Section  
103.200  
103.202  
103.204  
103.206  
103.208  
103.210  
103.212

Who May File  
Parties  
Notice, Complaint, and Answer  
Adding Parties  
Request for Informal Agency Investigation  
Notice of Complaint  
Hearing on Complaint

## SUBPART C: SETTLEMENT PROCEDURE

Section  
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103.302  
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103.306

Request for Relief from Hearing Requirement in State  
Proceeding  
Contents of Proposed Stipulation and Settlement Agreement  
Hearing on Proposed Stipulation and Settlement Agreement  
Board Order on Proposed Stipulation and Settlement Agreement

## SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section  
103.400  
103.402  
103.404  
103.406  
103.408  
103.410  
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103.414  
103.416

Purpose, Scope, and Applicability  
Interim Order  
Joinder of the Agency  
Draft Permit or Statement  
Stipulated Draft Remedy  
Contents of Public Notice  
Public Comment  
Hearing  
Contents of Board Order

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## SUBPART E: IMPOSITION OF PENALTIES

Section 103.500	Default
103.502	Civil Penalties
103.504	Civil Penalties Method of Payment
APPENDIX A	Comparison of Former and Current Rules

AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Procedural rules adopted at 3 Ill. Reg. 23, p. 96, effective May 29, 1983; repealed by operation of law effective October 1, 1984; new rules adopted at 9 Ill. Reg. 107, effective December 21, 1984; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 425, effective 1/1/99.

## SUBPART A: GENERAL PROVISIONS

## Section 103.100 Applicability

- a) This Part applies to proceedings before the Illinois Pollution Control Board (Board) concerning complaints alleging violations of the Environmental Protection Act (Act), regulations, and orders of the Board pursuant to Section 31 of the Act.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

## Section 103.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, the adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

## Section 103.104 Definitions

For the purpose of this Part, words and terms will have the meaning as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

## Section 103.106 General

## POLLUTION CONTROL BOARD

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## SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

## Section 103.200 Who May File

Pursuant to Section 31 of the Act, an enforcement proceeding may be commenced by any person.

## Section 103.202 Parties

- a) The person initiating an enforcement proceeding must be named the complainant. Any adverse party must be named the respondent. If the Agency is requested by the Board to conduct an investigation pursuant to Section 30 of the Act, the Board will name the Agency as a "party in interest" pursuant to 35 Ill. Adm. Code 101.404. Upon motion of the Agency, the Board may align the Agency with any other party or parties as appropriate.
- b) With leave of the Board and in accordance with Section 103.206 of this Part, cross-complainants, counter-complainants, and third-party complainants may be named as parties.
- c) Misnomer of a party is not a ground for dismissal; the name of any party may be corrected at any time.

## Section 103.204 Notice, Complaint, and Answer

- a) An enforcement proceeding will be commenced by the service of a notice and complaint by registered certified mail, messenger service, or personal service upon all respondents and the filing of 1 original and 9 copies of the notice and complaint with the Clerk.
- b) The notice must be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date set by the Board.
- c) The complaint must be captioned in accordance with 35 Ill. Adm. Code 101.Appendix A, Illustration A and contain:
  - 1) A reference to the provision of the Act and regulations that the respondents are alleged to be violating;
  - 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and
  - 3) A concise statement of the relief that the complainant seeks.

Enforcement proceedings may be initiated against any person allegedly violating this Act or any rule or regulation thereunder or any permit or term or condition thereof [415 ILCS 5/31(d)]. Complaints filed by persons other than the Attorney General or a State's Attorney will be known as citizen's complaints.

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- d) Except as provided in subsection (e) of this Section, the respondent may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.
- e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) of this Section will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.
- f) Any party serving a complaint upon another party must include the following language in the notice: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

## Section 103.206 Adding Parties

- a) The Board, on its own motion or the motion of a respondent, may order a person to be added as a respondent if a complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding.
- b) If the Board orders a person to be added as a respondent pursuant to subsection (a) of this Section, the Board will grant the complainant leave to file an amended complaint that sets forth a claim against the added respondent. The amended complainant must meet the requirements of Section 103.204 of this Subpart.
- c) Misjoinder and nonjoinder of parties with respect to enforcement proceedings are governed by 35 Ill. Adm. Code 101.403(b).
- d) If a party wished to file a counter-complaint, cross-complaint, or third-party complaint, the party must move the Board for leave to file the pleading. If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim against another person, the party who wishes to file the pleading must move the Board for leave to file the pleading.
- e) The pleading sought to be filed pursuant to subsection (d) of this Section must:
- 1) Set forth a claim that arises out of the occurrence or occurrences that are the subject of the proceeding; and
  - 2) Meet the requirements of Section 103.204 of this Subpart.

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## Section 103.208 Request for Informal Agency Investigation

- a) Any person may request an informal Agency investigation by submitting a request to the Board.
- b) The Board will forward the request to the Agency with a copy to the person requesting the investigation. The Agency must send an acknowledgement of receipt of the informal investigation request to the Board.
- c) The Board will take no further action upon the request for informal investigation beyond the action described in subsection (b) of this Section.

## Section 103.210 Notice of Complaint

- a) In addition to the notice of hearing requirements set forth in 35 Ill. Adm. Code 101, the Office of the Attorney General or the State's Attorney of the county in which the alleged violation occurred, when complainant, must give notice of each complaint and hearing at least 21 days before the hearing to:

- 1) any person that has complained to the Agency respecting the respondent within the six months preceeding the date of the complaint; and
- 2) to any person in the county in which the offending activity occurred that has requested notice of enforcement proceedings [415 ILCS 5/31(c)(1)].

- b) Failure to comply with the provisions of this Section may not be used as a defense to an enforcement proceeding, but any person adversely affected by the failure of compliance may upon motion to the hearing officer have the hearing postponed if prejudice is shown.

## Section 103.212 Hearing on Complaint

- a) Any person may file with the Board a complaint against any person allegedly violating the Act or any rule or regulation thereunder or any permit or term or condition thereof. When the Board receives a citizen's complaint, unless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing. [415 ILCS 5/31(d)] The definition for duplicitous and frivolous can be found at 35 Ill. Adm. Code 101.Subpart B.
- b) Motions made by respondents alleging that a citizen's complaint is duplicitous or frivolous must be filed no later than 30 days following the date of service of the complaint upon the respondent. Motions under this subsection may be made only with respect to citizen's enforcement proceedings. Timely filing the motion will, pursuant to Section 103.204(e) of this Subpart, stay the 60 day period for filing an answer to the complaint.
- c) The Board will automatically set for hearing all complaints filed by the Attorney General or a State's Attorney on behalf of the People of



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the State of Illinois.

- d) The Board in its discretion may hold a hearing on the violation and a separate hearing on the remedy.

## SUBPART C: SETTLEMENT PROCEDURE

### Section 103.300 Request for Relief from Hearing Requirement in State Enforcement Proceeding

- a) *Whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act [415 ILCS 5/31(c)(2)]. The proposed stipulation and settlement agreement must conform to the statement required for settlement submissions at hearing in Section 103.302 of this Part.*
- b) *Unless the Board, in its discretion, concludes that a hearing will be held, the Board will cause notice of the proposed stipulation and settlement, and request for relief, to be published and sent, as is required for hearing, by the Clerk's office. The notice will include a statement that any person may file with the Clerk of the Board a written demand for a hearing within 21 days after publication of the notice. The written demand for hearing must clearly state that a public hearing is requested and should indicate the assigned Board Docket number and respondent's name in the matter.*
- c) *If any person files a timely written demand for a hearing, the Board will deny the request for relief from a hearing and will hold a hearing in accordance with the notice provisions of Section 31(c)(1) of the Act. [415 ILCS 5/31(c)(2)] A copy of the proposed stipulation and settlement will be entered into and presented for the record.*

### Section 103.302 Contents of Proposed Stipulation and Settlement Agreement

No proceeding pending before the Board will be disposed of or modified without an order of the Board. A proposed stipulation and settlement agreement must contain a written statement, signed by the parties or their authorized representatives, outlining the nature of, the reasons for, and the purpose to be accomplished by the settlement. The written statement must include:

- a) A full stipulation of all material facts pertaining to the nature, extent, and causes of the alleged violations proposed to be settled;
- b) The nature of the relevant parties' operations and control equipment;
- c) *Facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved, including:*
- 1) *the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;*
  - 2) *the social and economic value of the pollution source;*
  - 3) *the suitability or unsuitability of the pollution source to the*

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- area in which it is located, including the question of priority of location in the area involved;*
- 4) *the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and*
  - 5) *any subsequent compliance. [415 ILCS 5/33(c)]*
- d) Details as to future plans for compliance, including a description of additional control measures and the dates for their implementation, if any; and
- e) The proposed penalty, if any.

### Section 103.304 Hearing on Proposed Stipulation and Settlement Agreement

When the parties submit a proposed stipulation and settlement agreement to the hearing officer at hearing, or when the Board orders that a hearing be held in accordance with Section 103.300(c) of this Part, the hearing officer will conduct a hearing in which interested persons may make statements with respect to the nature of the alleged violation and its impact on the environment, together with their views on the proposed stipulation and settlement agreement. The statements must be in accordance with 35 Ill. Adm. Code 101.628.

### Section 103.306 Board Order on Proposed Stipulation and Settlement Agreement

- a) The Board will consider the proposed settlement and stipulation agreement and the hearing record. The Board may accept, suggest revisions in, reject the proposed settlement and stipulation agreement, or direct further hearings as it deems appropriate. Where a National Pollutant Discharge Elimination System (NPDES) permit is involved in the settlement, notice of settlement must be published in the Environmental Register at least 30 days prior to the settlement.
- b) If the Board determines that a settlement involves or may involve the issuance or modification of a Resource Conservation Recovery Act (RCRA) permit, it will enter an interim order pursuant to Section 103.402 of this Part.

## SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

### Section 103.400 Purpose, Scope, and Applicability

- a) This Subpart applies when the Board finds in an interim order that an enforcement proceeding involves issuance or modification of a RCRA permit.
- b) Enforcement proceedings that involve issuance or modification of a RCRA permit include those in which, to grant complete relief, it appears that the Board will have to:
- 1) Revoke a RCRA permit;
  - 2) Order a RCRA permit issued or modified;
  - 3) Enter an order that could require actions that would be different

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from the conditions of a RCRA permit or 35 Ill. Adm. Code 724 or 725; or

- 4) Enter an order directing facility closure or modification after a finding that a facility was operating without a RCRA permit and that one was required.

- c) These procedures provide methods by which the Board will formulate a compliance plan, and, if necessary, direct the issuance or modification of a RCRA permit.

**Section 103.402 Interim Order**

- a) The Board will enter an interim order invoking the procedures of this Subpart on its own motion or on the motion of any party. Before the Board enters an interim order the parties must develop, through hearings or admissions pursuant to 35 Ill. Adm. Code 101.Subpart F, a sufficient record to support the findings that the Board must make in subsection (b) of this Section.

- b) An interim order invoking the procedures of this Subpart will include:

- 1) A finding or proposed finding of violation and any penalty or proposed monetary penalty;
- 2) A finding that the proceeding is an enforcement action that involves or may involve the issuance or modification of a RCRA permit;
- 3) Joinder of the Agency if it is not already a party; and
- 4) A time schedule for filing by the Agency of a partial draft permit.

- c) The interim order is not a final order and may be appealed only with leave of the Board.

**Section 103.404 Joinder of the Agency**

If the Board directs that the Agency be joined, the Clerk will send, by messenger or by certified mail addressed to the Agency, a copy of the Board Order requiring joinder. The mailing will constitute service of process upon the Agency.

**Section 103.406 Draft Permit or Statement**

- a) Within 60 days after entry of an interim order, the Agency must file and serve on all parties either a partial draft permit or a statement that no RCRA permit needs to be issued or modified.
- b) The partial draft permit must be in compliance with the requirements of 35 Ill. Adm. Code 705.141 and must include such conditions as the Agency finds are necessary to correct the violations found in the interim order.
- c) The Agency may confer with other parties and enter into agreements as to the substance of the partial draft permit that it will recommend to the Board. The Agency must disclose any such conferences or

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agreements in the proposed draft permit. The agreements do not bind the Board.

- d) If the Agency issues a statement that no RCRA permit needs to be issued or modified, the remaining procedures of this Subpart will not be followed, unless the Board determines otherwise.

**Section 103.408 Stipulated Draft Remedy**

- a) The parties may agree to a stipulated draft remedy.

- b) A stipulated draft remedy must include the following:

- 1) Proposed mandatory orders that the parties agree should be included in the Board's final order, which may include one or more of the following:
    - A) An order to cease and desist conducting regulated activities;
    - B) An order to close a facility or unit;
    - C) An order to execute a post-closure care plan;
    - D) A compliance plan, including a time schedule to assure compliance with regulations in the shortest possible time;
    - E) An order to provide a performance bond or other financial assurance;
    - F) An order to apply for a permit or permit modification; and
    - G) An order revoking a permit.
  - 2) A partial draft permit or statement as provided by Section 103.406 of this Part.
  - 3) A statement as to whether or not the stipulation is divisible for purposes of Board determinations.
- c) All parties, including the Agency, must sign the stipulated draft remedy before notice is given pursuant to Section 103.410 of this Part.

**Section 103.410 Contents of Public Notice**

- a) In addition to all parties, the Agency must serve a copy of any partial draft permit on USEPA at the address listed in 35 Ill. Adm. Code 101.Subpart C.
- b) In addition to the requirements of the Act and Section 103.210 of this Part, the Agency must, at a minimum, give notice of the filing of a partial draft permit to the following persons:
  - 1) Federal agencies as designated by USEPA;
  - 2) Illinois Department of Transportation;
  - 3) Illinois Department of Natural Resources;
  - 4) Illinois Department of Public Health;
  - 5) The Governor of any other state adjacent to the county in which the facility is located; and
  - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the

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- closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 103.208 of this Part, the Agency must give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2), (d)(4) and (d)(6) through (d)(8).
- d) A notice of a partial draft permit must include the following information:
- 1) The address of the Board office;
  - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement proceeding;
  - 3) A brief description of the business conducted at the facility and the activity that is the subject of the enforcement proceeding;
  - 4) A statement of the violations the Board has found or has proposed to find;
  - 5) A statement that the Agency has filed a partial draft permit;
  - 6) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the partial draft permit or stipulated remedy;
  - 7) A notice of a hearing, the address of the Board, a statement that a hearing will be held and that the record will remain open for 45 days after the filing of the partial draft or stipulated remedy for written comments;
  - 8) A statement that the record in the proceeding is available at the Board office for inspection, except those portions that are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public in accordance with 35 Ill. Adm. Code 130;
  - 9) A statement that enforcement proceedings are considered pursuant to 415 ILCS 5/30; and
  - 10) Any additional information considered necessary or proper.

**Section 103.412 Public Comment**

Any person, including USEPA, may comment on the partial draft permit or stipulated draft remedy within 45 days after it has been filed with the Board and notice given pursuant to Section 103.410 of this Part. Parties will receive distributions from the Clerk's Office in accordance with 35 Ill. Adm. Code 101.628(c)(3).

**Section 103.414 Hearing**

- a) The hearing officer, after appropriate consultation with the parties, will set a time and place for the hearing to be held not less than 30 days after the filing of the partial draft permit or stipulated remedy.
- b) The hearing will be held in the county in which the facility is

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- located, in the population center in the county closest to the facility.
- c) The Clerk in consultation with the hearing officer will give notice of the hearing to the persons entitled to notice in Sections 103.210 and 103.410 of this Part, and to any other persons who have commented, requested to comment or requested notice, and to any persons on a mailing list provided by the Agency.
  - d) Notice will be mailed not less than 30 days before the hearing.

**Section 103.416 Contents of Board Order**

- a) The Board will not enter an order that would require the issuance or modification of a RCRA permit unless the public notice, public comment and hearing procedures of this Subpart have been followed.
- b) If the Board determines that, to grant complete relief, it must order the issuance or modification of a RCRA permit, its final order will include an order directing the Agency to issue or modify the RCRA permit, which may take one of the following forms:
  - 1) An order to issue or modify a permit in conformance with a draft permit;
  - 2) An order to issue or modify a permit in conformance with a draft permit as modified by the Board order; or
  - 3) Guidelines for issuance or modification of a permit in conformance with the order and other applicable regulations.
- c) If the order specifies a schedule leading to compliance with the Act and Board rules:
  - 1) The schedule will require compliance as soon as practicable; and
  - 2) The order may require the posting of sufficient performance bond or other security to assure correction of the violation within the time prescribed.

**SUBPART E: IMPOSITION OF PENALTIES****Section 103.500 Default**

The procedures for default can be found at 35 Ill. Adm. Code 101.608.

**Section 103.502 Civil Penalties**

Civil penalties will be determined pursuant to Sections 33(c) and 42 of the Act [415 ILCS 5/33(c) and 42].

**Section 103.504 Civil Penalties Method of Payment**

- a) Payment of the penalty must be made by certified or cashier's check, money order, or in installments by the foregoing means after execution of a promissory note containing an agreement for judgment.
- b) All remittances must be made payable to the Environmental Protection

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Trust Fund or such other fund as specified by the Board.

- c) Any such penalty not paid within the time prescribed in the Board order will incur interest at the rate set forth in Section 1003(a) of the Illinois Income Tax Act [35 ILCS 5/1003(a)].

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**Section 103.APPENDIX A Comparison of Former and Current Rules**

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

**FORMER PART 103**

103.101  
103.120  
103.121  
103.122  
103.123  
103.125

103.140  
103.141

103.142

103.161  
103.162  
103.163  
103.180  
103.200  
103.204  
103.206  
103.207  
103.208  
103.209  
103.220

103.221  
103.224  
103.Subpart H  
103.Subpart I

**CURRENT SECTION**

102.100  
103.200  
103.202  
103.204  
101.204  
103.212  
101.600  
101.602  
101.Subpart E  
101.406  
101.408  
103.206  
101.502  
101.510  
101.616  
101.618  
101.622  
103.Subpart C  
101.610  
101.626  
101.630  
101.632  
101.626  
101.624  
103.500  
101.608  
101.604  
103.416  
101.Subpart I  
103.Subpart D



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## NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Enforcement Proceedings

2) Code Citation: 35 Ill. Adm. Code 103

3) Section Numbers: Adopted Action:

103.101 Repealed  
103.120 Repealed  
103.121 Repealed  
103.122 Repealed  
103.123 Repealed  
103.124 Repealed  
103.125 Repealed  
103.140 Repealed  
103.141 Repealed  
103.142 Repealed  
103.143 Repealed  
103.160 Repealed  
103.161 Repealed  
103.162 Repealed  
103.163 Repealed  
103.180 Repealed  
103.200 Repealed  
103.201 Repealed  
103.202 Repealed  
103.203 Repealed  
103.204 Repealed  
103.205 Repealed  
103.206 Repealed  
103.207 Repealed  
103.208 Repealed  
103.209 Repealed  
103.210 Repealed  
103.220 Repealed  
103.221 Repealed  
103.222 Repealed  
103.223 Repealed  
103.224 Repealed  
103.240 Repealed  
103.241 Repealed  
103.260 Repealed  
103.261 Repealed  
103.262 Repealed  
103.263 Repealed  
103.264 Repealed  
103.265 Repealed  
103.266 Repealed  
103.267 Repealed  
103.268 Repealed

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4) Statutory Authority: Implementing Sections 5, 31, 32, and 33 of the Environmental Protection Act (Act) [415 ILCS 5/5, 31, 32, and 33] and authorized by Section 26 of the Act [415 ILCS 5/26].

5) Effective Date of Repealer: January 1, 2001

6) Does this rulemaking contain an automatic repeal date? No

7) Does this repealer contain incorporations by reference? No

8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the Board's Chicago office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5198

10) Has JCAR issued a Statement of Objection to this repealer? No

11) Differences between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter? Yes

13) Will this repealer replace emergency rules currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Repealer: In an effort to make the Board more accessible to the lay person, the Board proposes new user-friendly procedural rules that simplify, clarify, streamline and update the rules where necessary.

16) Information and questions regarding this adopted repealer shall be directed to:

Carol Sudman  
PCB  
600 S. Second St., Suite 402  
Springfield, Illinois 62701  
(217) 524-8509

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## NOTICE OF ADOPTED REPEALER

1) Heading of the Part: General Provisions

2) Code Citation: 35 Ill. Adm. Code 101

3) Section Numbers: Adopted Action:

101.100 Repealed  
 101.101 Repealed  
 101.102 Repealed  
 101.103 Repealed  
 101.104 Repealed  
 101.105 Repealed  
 101.106 Repealed  
 101.107 Repealed  
 101.108 Repealed  
 101.109 Repealed  
 101.120 Repealed  
 101.121 Repealed  
 101.122 Repealed  
 101.140 Repealed  
 101.141 Repealed  
 101.142 Repealed  
 101.143 Repealed  
 101.144 Repealed  
 101.160 Repealed  
 101.161 Repealed  
 101.162 Repealed  
 101.180 Repealed  
 101.181 Repealed  
 101.200 Repealed  
 101.220 Repealed  
 101.221 Repealed  
 101.240 Repealed  
 101.241 Repealed  
 101.242 Repealed  
 101.243 Repealed  
 101.244 Repealed  
 101.245 Repealed  
 101.246 Repealed  
 101.247 Repealed  
 101.260 Repealed  
 101.261 Repealed  
 101.280 Repealed  
 101.281 Repealed  
 101.300 Repealed  
 101.301 Repealed  
 101.302 Repealed  
 101.303 Repealed  
 101.304 Repealed

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APPENDIX A Repealed  
 APPENDIX B Repealed  
 APPENDIX C Repealed  
 APPENDIX D Repealed  
 APPENDIX E Repealed  
 APPENDIX F Repealed

4) Statutory Authority: Implementing Sections 5, 7.1, 7.2, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, and 41] and authorized by Section 26 of the Act [415 ILCS 5/26].

5) Effective Date of Repealer: January 1, 2001

6) Does this rulemaking contain an automatic repeal date? No

7) Does this repealer contain incorporations by reference? No

8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5289

10) Has JCAR issued a Statement of Objection to this repealer? No

11) Differences between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes

13) Will this repealer replace an emergency repealer currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Repealer: In an effort to make the Board more accessible to the lay person, the Board proposes new user-friendly procedural rules that simplify, clarify, streamline and update the rules where necessary.

16) Information and questions regarding this adopted repealer shall be directed to: Carol Sudman

Pollution Control Board  
 600 S. Second St., Suite 402  
 Springfield, Illinois 62701  
 (217) 524-8509

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## NOTICE OF ADOPTED RULES

1) Heading of the Part: General Rules

2) Code Citation: 35 Ill. Adm. Code 101

3) Section Numbers: Adopted Action:

101.100	New Section
101.102	New Section
101.104	New Section
101.106	New Section
101.108	New Section
101.110	New Section
101.112	New Section
101.114	New Section
101.200	New Section
101.202	New Section
101.300	New Section
101.302	New Section
101.304	New Section
101.306	New Section
101.308	New Section
101.400	New Section
101.402	New Section
101.403	New Section
101.404	New Section
101.406	New Section
101.408	New Section
101.500	New Section
101.502	New Section
101.504	New Section
101.506	New Section
101.508	New Section
101.510	New Section
101.512	New Section
101.514	New Section
101.516	New Section
101.518	New Section
101.520	New Section
101.522	New Section
101.600	New Section
101.602	New Section
101.604	New Section
101.606	New Section
101.608	New Section
101.610	New Section
101.612	New Section
101.614	New Section
101.616	New Section
101.618	New Section

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101.620	New Section
101.622	New Section
101.624	New Section
101.626	New Section
101.628	New Section
101.630	New Section
101.632	New Section
101.700	New Section
101.800	New Section
101.802	New Section
101.902	New Section
101.904	New Section
101.906	New Section
101.908	New Section
APPENDIX A	New Section
Illustration A	New Section
Illustration B	New Section
Illustration C	New Section
Illustration D	New Section
Illustration E	New Section
Illustration F	New Section
Illustration G	New Section
Illustration H	New Section
Illustration I	New Section
Illustration J	New Section
Illustration K	New Section
APPENDIX B	New Section
APPENDIX C	New Section
APPENDIX D	New Section
APPENDIX E	New Section
Illustration A	New Section
Illustration B	New Section
APPENDIX F	New Section
APPENDIX G	New Section

4) Statutory Authority: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

5) Effective Date of Rules: January 1, 2001

6) Does this rulemaking contain an automatic repeal date? No

7) Do these rules contain incorporations by reference? No

8) The adopted rules, including any material incorporated by reference, are

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on file in the Board's Chicago office and are available for public inspection.

9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5225

10) Has JCAR issued a Statement of Objection to these rules? No

11) Differences between proposal and final version: In addition to technical changes and clarifications, the Board made some substantive changes based upon public comment. For example, the Board takes several steps to reduce the amount of paper required to be filed with the Board. Instead of an original and nine copies, the Board now will require an original and four copies of (1) Illinois Environmental Protection Agency (Agency) and Office of the State Fire Marshal (OSFM) records under Part 105 appeals and (2) local pollution control facility siting records under Part 107 appeals. See 101.302(h). The Board also eliminates the requirement to file discovery documents, except in certain circumstances, and requires that, when feasible, persons print on both sides of each page of their filings. See 101.302(g) and (i).

The Board extends the amount of time that a party has to respond to a motion from 7 to 14 days. See 101.500(d). The rules also state that any objection to a hearing officer's ruling made at hearing, and any oral motion to the Board made at hearing, will be deemed waived if not filed within 14 days after the Board receives the hearing transcript. See 101.502. In Section 101.506, the Board extends the amount of time to file a motion to strike, dismiss, or challenge the sufficiency of any pleading to 30 days.

Sanctions that the Board may order include staying a proceeding, barring filings or a claim or defense, and striking pleadings. In the non-exhaustive list of potential sanctions, the rules no longer refer to the offending person paying reasonable expenses. See 101.800(b).

The Board clarifies that moving the Board to reconsider its final opinion and order is not a prerequisite to appealing the Board's decision to the Appellate Court. See Section 101.904(f).

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes

13) Will these rules replace emergency rules currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: Part 101 sets forth the general procedural provisions that apply to all Board proceedings, including adjudicatory and

## POLLUTION CONTROL BOARD

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rulemaking proceedings. These general rules apply unless more specific rules for particular processes supersede them. The balance of the proposed rules (i.e., Parts 102, 103, 104, 105, 106, 107, 108, 125, and 130) govern specific types of processes.

The Board has placed into proposed Part 101 not only many provisions of the Board's current general procedural rules (see 35 Ill. Adm. Code 101), but also many of the general requirements for adjudicatory proceedings found in the Board's current rules on enforcement proceedings (see 35 Ill. Adm. Code 103). Part 101 includes definitions (see Sections 101.200 and 101.202), as well as provisions on the following: computing time (see Section 101.300); filing documents (see Section 101.302); serving documents (see Section 101.304); decision deadlines (see Section 101.308); intervention (see Section 101.402); joinder (see Section 101.403); consolidating claims (see Section 101.406); motions (see Subpart E); hearings, evidence, and discovery (see Subpart F); sanctions (see Subpart H); and review of final Board opinions and orders (see Subpart I).

A more detailed discussion of these rules is contained in the Board's opinion and order in R00-20, which the Board adopted on December 21, 2000. The opinion and order are available from the Board's Chicago office and on the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

16) Information and questions regarding these adopted rules shall be directed to:

Carol Sudman  
PCB  
600 S. Second St., Suite 402  
Springfield, Illinois 62701  
(217) 524-8509

The opinion and order for this rule (R00-20) are available on the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). For copies please contact:

Dorothy Gunn, Clerk  
PCB  
100 W. Randolph St., Suite 11-500  
Chicago IL 60601  
(312) 814-3620

The full text of the adopted rules begins on the next page:



## POLLUTION CONTROL BOARD

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TITLE 35: ENVIRONMENTAL PROTECTION  
 SUBTITLE A: GENERAL PROVISIONS  
 CHAPTER I: POLLUTION CONTROL BOARD

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 GENERAL RULES

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## POLLUTION CONTROL BOARD

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TITLE 35: ENVIRONMENTAL PROTECTION  
 SUBTITLE A: GENERAL PROVISIONS  
 CHAPTER I: POLLUTION CONTROL BOARD

PART 101  
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101.700 Oral Argument

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## Section

101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders,  
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## SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

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- 101.902 Motions for Reconsideration  
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## APPENDIX A Captions

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 ILLUSTRATION D Adjusted Standard Petition  
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AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. '8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 24 Ill. Reg. 446, effective JAN 01 2001.

## SUBPART A: GENERAL PROVISIONS

## Section 101.100 Applicability

- a) This Part sets forth the rules generally applicable to proceedings before the Illinois Pollution Control Board (Board), and should be

## POLLUTION CONTROL BOARD

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read in conjunction with procedural rules for the Board's specific processes, found at 35 Ill. Adm. Code 102 through 130, and the Board's Administrative Rules, found at 2 Ill. Adm. Code 2175. In the event of a conflict between the rules of this Part and those found in subsequent Parts, the more specific requirement applies.

- b) The provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent.

## Section 101.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, the adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

## Section 101.104 Repeals

All Board resolutions adopted before January 1, 2001 that relate to procedural matters for Board proceedings are repealed and are superseded by 35 Ill. Adm. Code 101-130.

## Section 101.106 Board Authority

- a) The Board has the authority to determine, define and implement the environmental control standards applicable in the State of Illinois and may adopt rules and regulations in accordance with Title VII of the Act [415 ILCS 5/5(b)].
- b) The Board has the authority to conduct hearings upon complaints charging violations of the Act or of regulations thereunder; upon petitions for variances; upon petitions for review of the Agency's denial of a permit in accordance with Title X of the Act; upon other petition to remove a seal under Section 34 of the Act; upon other petitions for review of final determination which are made pursuant to the Act or Board rules and which involve a subject which the Board is authorized to regulate; and such other hearings as may be provided by rule [415 ILCS 5/5(d)].
- c) In addition to subsections (a) and (b) of this Section, the Board has the authority to act as otherwise provided by law.

## Section 101.108 Board Proceedings

- a) Board proceedings can generally be divided into two categories: rulemaking proceedings and adjudicatory proceedings.
- b) The following are examples of Board rulemaking proceedings: Identical-in-Substance, Clean Air Act/Fast Track, Federally Required Rulemaking, General Rulemaking, and Site-Specific Rulemaking.

## POLLUTION CONTROL BOARD

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Procedural rules for these types of proceedings can be found at 35 Ill. Adm. Code 102.

- c) The following are examples of Board adjudicatory proceedings: Enforcement Proceedings (35 Ill. Adm. Code 103), Variance Petitions (35 Ill. Adm. Code 104), Adjusted Standard Petitions (35 Ill. Adm. Code 104), Permit Appeals (35 Ill. Adm. Code 105), Leaking Underground Storage Tank Appeals (35 Ill. Adm. Code 105), Pollution Control Facility Siting Appeals (35 Ill. Adm. Code 107), and Administrative Citations (35 Ill. Adm. Code 108).
- d) Board decisions will be made at meetings open to the public. Except as provided in subsection (e) of this Section, 4 members of the Board constitute a quorum, and 4 affirmative votes are required to adopt a Board decision.
- e) At a hearing pursuant to Section 34(d) of the Act to determine whether a seal should be removed, at least one Board Member shall be present, and those Board Members present may render a final decision without regard to the requirements of Section 5(a) of the Act (415 ILCS 5/34(d)).

## Section 101.110 Public Participation

- a) General. The Board encourages public participation in all of its proceedings. The extent to which the law allows for the participation varies, depending on the type of Board proceeding involved, the party status of the person or persons seeking to participate, and the rules governing that type of proceeding. Public participation in particular proceedings may be more specifically delineated by Board or hearing officer order consistent with the provisions of applicable law and the Board's procedural rules.
- b) Party/Non-Party Status. The issue of who constitutes a proper party in each type of adjudicatory proceeding before the Board is addressed in the rules. A person who wishes to participate in a Board adjudicatory proceeding and is not a party will be deemed a participant and will have only those rights specifically provided in these rules. A person who wishes to participate in a Board regulatory proceeding will be deemed a participant and will have only those rights specifically provided in these rules.
- c) Amicus Curiae Briefs. Amicus curiae briefs may be filed in any adjudicatory proceeding by any interested person, provided permission is granted by the Board. Response briefs may be allowed by permission of the Board, but not as of right. The briefs must consist of argument only and may not raise facts that are not in evidence in the relevant proceeding. Amicus curiae briefs, and any responses, will be considered by the Board only as time allows. The briefs will not delay decision-making of the Board. (See also Section 101.302(k) of this Part.)

## Section 101.112 Bias and Conflict of Interest

## POLLUTION CONTROL BOARD

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- a) No Board Member or Board employee may represent any other person in any Board proceeding.
- b) No former Board Member or Board employee may represent any other person in any Board proceeding in which he or she participated personally and substantially as a Board Member or Board employee, unless the Board and, as applicable, all parties or proponents in the proceeding consent in writing after disclosure of the participation. For purposes of subsections (a) and (b) of this Section, representation includes consulting on legal or technical matters, and Board employee means a person the Board employs on a full-time, part-time, contract, or intern basis.
- c) The Board, on its own motion or the motion of any party, may disqualify a hearing officer for bias or conflict of interest as provided by Section 10-30(b) of the IAPA [5 ILCS 100/10-30(b)].

## Section 101.114 Ex Parte Communications

- a) Adjudicatory Proceedings. Board members and employees are prohibited from engaging in ex parte communications with respect to a pending adjudicatory proceeding. (See definition of "ex parte communication" in Section 101.202 of this Part.) For purposes of this Section, Board employee means a person the Board employs on a full-time, part-time, contract, or intern basis.
- b) Regulatory Proceedings. Board Members and Board employees should not engage in an ex parte communication designed to influence their action with respect to a pending regulatory proceeding. Whenever practicable, communications with respect to a pending regulatory proceeding must be in writing and addressed to the Clerk rather than to individual Board Members or Board employees.
- c) Nothing in this Section precludes Board Members or Board employees from receiving informal complaints about individual pollution sources, or forbids the administrative contacts as would be appropriate for judges and other judicial officers. Information about a pollution source included in the record of a regulatory proceeding is not an ex parte communication with respect to any adjudicatory proceeding concerning the pollution source.
- d) In the event that an ex parte communication occurs, the Board Member or Board employee will make that communication part of the record of the proceeding. To make an oral ex parte communication part of the record, the substance of the oral communication, along with the identity of each person involved in the communication, will be either set forth in a memorandum and placed in the record or announced on the record at a public hearing.

## SUBPART B: DEFINITIONS

## Section 101.200 Definitions Contained in the Act

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Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the definitions of the Act apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130.

**Section 101.202 Definitions for Board's Procedural Rules**

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act. [415 ILCS 5/1 et seq.]

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board pursuant to authority granted to the Board under Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

"Administrative citation" or "AC" means a citation issued pursuant to Section 31.1 of the Act by the Agency, or by a unit of local government acting as the Agency's delegate pursuant to Section 4(r) of the Act.

"Administrative citation review (appeal)" means a petition for review of an administrative citation filed pursuant to Section 31.1(d) of the Act. (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn, signed statement witnessed by a notary public.

"Affidavit of service" means an affidavit that states that service of a document upon specified persons was made, and the manner in which, and date upon which, service was made.

"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

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"Agency recommendation" means the document filed by the Agency pursuant to Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

"Amicus curiae brief" means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and 101.628 of this Part.)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval pursuant to any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

"Article" means any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map [415 ILCS 5/7.1].

"Attorney General" means the Attorney General of the State of Illinois and/or representatives thereof.

"Authorized representative" means any person who is authorized to act on behalf of another person.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

"Board decision" means an opinion or an order voted in favor of by at least four members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

"Board designee" means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

"Board meeting" means an open meeting held by the Board pursuant to Section 5(a) of the Act in which the Board makes its decisions and determinations.

"Board's procedural rules" means the Board's regulations set forth at 35 Ill. Adm. Code 101 through 130.

"Brief" means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

"CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

"Certificate of acceptance" means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

"Chairman" means the Chairman of the Board designated by the Governor pursuant to Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

"Clean Air Act" or "CAA" means the federal Clean Air Act, as now and hereafter amended, 42 USC 7401 et seq. [415 ILCS 5/39.5]

"Clean Water Act" means the federal Clean Water Act, 33 USC 1251 et seq.

"Clerk" means the Clerk of the Board.

"Complaint" means the initial filing that begins an enforcement proceeding pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103.

"Compliance plan" means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

"Copy" means any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article [415 ILCS 5/7.1].

"Counter-complaint" means a pleading that a respondent files setting forth a claim against a complainant. (See 35 Ill. Adm. Code 103.206.)

"Cross-complaint" means a pleading that a party files setting forth a claim in its favor against a co-party. (See 35 Ill. Adm. Code 103.206.)

"Cross-media impacts" means impacts that concern multiple environmental areas, such as air, land and/or water.

"Decision date" means the Board meeting immediately preceding the decision deadline.

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"Decision deadline" means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

"Decision period" means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory proceedings. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

"Deinked stock" means paper that has been processed to remove inks, clays, coatings, binders and other contaminants [415 ILCS 20/2.1].

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation or other function pursuant to Section 4(r) of the Act.

"DNR" means the Illinois Department of Natural Resources.

"Discovery" means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding in order to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

"DNS" means the Illinois Department of Nuclear Safety.

"DOA" means the Illinois Department of Agriculture.

"Duplicitious" or "Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum.

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed pursuant to Section 31 of the Act by the Attorney General, State's Attorney, or other persons, in which the complaint alleges violation of the Act or any rule or regulation or Board order thereunder or any permit or term or condition thereof.

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"Ex parte communication" means a communication between a person who is not a Board Member or Board employee and a Board Member or Board employee that reflects on the substance of a pending Board proceeding and that takes place outside the record of the proceeding. *Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications* [5 ILCS 100/10-60(d)]. For purposes of this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 of this Part.)

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted pursuant to Section 28.5 of the Act.

"Federally required rule" means a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40 [415 ILCS 5/28.2].

"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document into a proceeding or record before the Board. The Clerk's Office is located at 100 West Randolph Street, Suite 11-500, Chicago, IL 60601.

"Final order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is appealable to an appellate court pursuant to Section 41 of the Act. (See Subpart I of this Part.)

"Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

"Hearing" means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

"IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

"Identical-in-substance rules (or regulations)" means State

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*regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois* [415 ILCS 5/7.2].

"Initial filing" means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

"Inquiry hearing" means a hearing conducted by the Board for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

"Interlocutory appeal" means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section 101.908 of this Part.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518 of this Part.)

"Intervenor" means a person, not originally a party to an adjudicatory proceeding, who voluntarily participates as a party in the proceeding with the leave of the Board. (See Section 101.402 of this Part.)

"Intervention" means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the proceeding as a party with the leave of the Board. (See Section 101.402 of this Part.)

"JCAR" means the Illinois General Assembly's Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 of this Part and 35 Ill. Adm. Code 103.206.)

"Mistake" means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

"Motion" means a request made to the Board or the hearing officer for

## POLLUTION CONTROL BOARD

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the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste [415 ILCS 5/3.32(b)].

"Non-disclosable information" means information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act [415 ILCS 5/7(a)].

"Notice list" means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "service list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Notice to reinstate" means a document filed that recommences the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308 of this Part.)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700 of this Part.)

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, or testifying at hearing.

"Participant in a CAAPP Comment Process" means a person who takes part

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in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.

"Party" means the person by or against whom a proceeding is brought.

"Party in interest" means the Agency when asked to conduct an investigation pursuant to Section 30 of the Act during an ongoing proceeding. (See Section 101.404 of this Part.)

"Peremptory rulemaking" means any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt. [5 ILCS 100/5-50]

"Permit appeal" means an adjudicatory proceeding brought before the Board pursuant to Title X of the Act.

"Person" means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns. [415 ILCS 5/3.26]

"Petition" means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

"Pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

"Pollution control facility" means any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act. The following are not pollution control facilities:

waste storage sites regulated under 40 CFR 761.42;

sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within

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the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person; sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3 of the Act;

abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;

sites or facilities used by any person to specifically conduct a landscape composting operation;

regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;

the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of the Act;

the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;

the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in paragraph (5) of subsection (a) of Section 22.18(b) of the Act are exempt under this definition;

the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;

the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Federal Resource

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Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;

the portion of a site or facility accepting exclusively general construction or demolition debris, located in a county with a population over 700,000, and operated and located in accordance with Section 22.38 of the Act. [415 ILCS 5/3.32(a)]

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board pursuant to Section 40.1 of the Act.

"Postconsumer material" means paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage. Additionally, it includes all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream [415 ILCS 20/3(f)(2)(i) and (ii)]. (See also definition of "recycled paper" in this Section.)

"Prehearing conference" means a meeting held in an adjudicatory case to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing [415 ILCS 5/27(d)]. (See 35 Ill. Adm. Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board pursuant to authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (e.g., rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

"Provisional variance" means a short term variance sought by a party and recommended by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.308.)

"Public comment" means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.



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"Qualitative description" means a narrative description pertaining to attributes and characteristics.

"Quantitative description" means a numerically based description pertaining to attributes and characteristics.

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required pursuant to Section 21(f) of the Act.

"Record" means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during the course of a proceeding.

"Recycled paper" means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also "postconsumer material" in this Section.)

"Registered agent" means a person registered with the Secretary of State for the purpose of accepting service for any entity, or a person otherwise authorized in writing as an agent for the purpose of accepting service for that entity.

"Regulatory hearing" or "proceeding" means a hearing or proceeding held pursuant to Title VII of the Act or other applicable law with respect to regulations.

"Regulatory relief mechanisms" means variances, provisional variances and adjusted standards. (See 35 Ill. Adm. Code 104.)

"Representing" means, for purposes of Part 130, *describing, depicting, containing, constituting, reflecting or recording* [415 ILCS 5/7.1].

"Requester" means, for purposes of Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

"Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

"Sanction" means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. (See also Subpart H of this

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Part.)

"SDWA" means the federal Safe Drinking Water Act (42 USC 300f et seq.).

"Service" means delivery of documents upon a person. (See Sections 101.300(c) and 101.304 of this Part.)

"Service list" means the list of persons designated by the hearing officer or Clerk in a regulatory or adjudicatory proceeding upon whom participants must serve motions, prefiled questions and prefiled testimony and any other documents that the participants file with the Clerk unless the hearing officer otherwise directs. (See definition of "notice list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Severance" means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

"Site-specific rule or regulation" means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

"State enforcement proceeding" means an enforcement proceeding, other than a citizen's enforcement proceeding, that is brought pursuant to Section 31(a) of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of law. (See Section 101.514 of this Part.)

"Subpoena" means a command to appear at a certain time and place to give testimony upon a certain matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516 of this Part.)

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"Third party complaint" means a pleading that a respondent files setting forth a claim against a person who is not already a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

"Trade secret" means the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. [415 ILCS 5/3.48]

"Transcript" means the official recorded testimony from a hearing.

"USEPA" means the United States Environmental Protection Agency.

"Underground storage tank appeal" or "UST appeal" means an appeal of an Agency final decision made pursuant to Title XVI of the Act.

"UST" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board pursuant to Title IX of the Act upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship [415 ILCS 5/35(a)].

"Waiver" means the intentional relinquishing of a known right, usually with respect to a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308 of this Part.)

"Web site" means the Board's computer-based informational service accessed on the Internet at <http://www.ipcb.state.il.us>.

#### SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

### Section 101.300 Computation of Time

- a) Computation of Time. Computation of any period of time prescribed in the Act, other applicable law, or these rules will begin with the first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday,

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Sunday or national or State legal holiday.

- b) Time of Filing. Documents will be considered filed when they are filed in conformance with the requirements found in Section 101.302 of this Part and any other filing requirements specifically set out in the other Parts of these rules.

- 1) If filed in person, by messenger service or mail delivery service other than U.S. Mail, documents are considered filed when they are received in the Office of the Clerk.

- 2) If a document is filed by U.S. Mail subsequent to a filing deadline, yet the postmark date precedes the filing deadline, the document will be deemed filed on the postmark date, provided all filing requirements are met as set forth in Section 101.302 of this Part.

- 3) Documents filed and received in the Office of the Clerk after 4:30 p.m. will be marked as filed the following business day. The Clerk will record the appropriate filing date on all filed documents.

- 4) For purposes of Board decision deadlines, time does not begin until the date on which the initial filing is date-stamped by the Clerk.

- c) Time of Service. In the case of personal service, service is deemed complete on the date personal delivery was effectuated. In the case of facsimile transmission, service is deemed complete on the date of a complete and proper transmittal (facsimile filings are only allowed in accordance with Section 101.302(d) of this Part). In the case of service by registered or certified mail, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt. In the case of service by U.S. Mail, service is presumed complete four days after mailing. The presumption can be rebutted by proper proof.

- d) Date of Board Decision.

- 1) For purposes of statutory decision deadline proceedings, the date of the Board decision is the date of the Board meeting where a final opinion and order of the Board was adopted by the vote of at least four Board members.

- 2) For purposes of appeal, the date of the party's certified mail receipt of the Board decision is the date of service of the final opinion and order by the Board upon the appealing party. Or, in the event of a timely filed motion for reconsideration filed pursuant to Section 101.520 of this Part, the date of the party's certified mail receipt of the Board order ruling upon the motion is the date of service by the Board upon the appealing party.

### Section 101.302 Filing of Documents

- a) This Section contains the Board's general filing requirements. Additional requirements may exist for specific proceedings elsewhere in these rules. The Clerk will refuse for filing any document that

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does not comply with the minimum requirements of this Section.

- b) All documents filed with the Board must be filed with the Clerk's Office. Service on a hearing officer does not constitute filing with the Board unless the document is submitted to the hearing officer during the course of a hearing. Documents may be filed at:

Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218

- c) Documents may be filed by U.S. Mail or other mail delivery service, in person or by messenger.
- d) Filing by electronic transmission or facsimile will only be allowed with the prior approval of the Clerk of the Board or hearing officer assigned to the proceeding. The Agency may file a provisional variance recommendation with the Board through electronic transmission or facsimile within 2 days prior to a regularly scheduled meeting date followed by a hard copy submission.
- e) The following initial filings require filing fees and will only be considered filed when accompanied by the appropriate fee, which may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, but which may not be paid in cash:

- 1) Petition for Site-Specific Regulation, \$75;
- 2) Petition for Variance, \$75;
- 3) Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed pursuant to Section 40 of the Act, \$75;
- 4) Petition to Review Pollution Control Facility Siting Decisions, pursuant to Section 40.1 of the Act, \$75; and
- 5) Petition for Adjusted Standard, pursuant to Section 28.1 of the Act, \$75.

- f) All documents filed must be served in accordance with Subpart C of this Part.
- g) All documents filed with the Board should contain the relevant proceeding caption and number and must be submitted on 8 1/2 x 11 inch recycled paper as defined in Subpart B of this Part, and double sided if feasible.

- h) Unless the Board or its procedural rules provide otherwise, all documents must be filed with a signed original and 9 duplicate copies (10 total), except that:

- 1) Documents and motions specifically directed to the assigned hearing officer must be filed with the Clerk with a signed original and 4 duplicate copies (5 total), or as the hearing officer orders;
- 2) The Agency may file a signed original and 4 duplicate copies (5 total) of the record required by Section 105.116, 105.302, and 105.410;

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- 3) The OSFM may file a signed original and 4 duplicate copies (5 total) of the record required by Section 105.508; and
  - 4) The siting authority may file a signed original and 4 duplicate copies (5 total) of the record required by Sections 107.300 and 302.
- i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except upon leave or direction of the Board or hearing officer. Any discovery request under these rules to any nonparty must be filed with the Clerk of the Board with a signed original and 4 duplicate copies (5 total), or as the hearing officer directs.
- j) Non-Conforming Exhibits. When possible, exhibits must be reduced to conform to 8 1/2 x 11 inch recycled paper. However, one non-conforming original copy may be filed with the Clerk's Office. Upon closure of the proceeding, the non-conforming copy may be returned to the person filing it in accordance with 2 Ill. Adm. Code 2175.300.
- k) Page Limitation. No motion, brief in support of motion, or brief may exceed 50 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material.

## Section 101.304 Service of Documents

- a) Service Requirements. This Section contains the Board's general service requirements. However, the more specific Part for a proceeding type may contain additional requirements.
- b) Duty to Serve. Parties in Board adjudicatory proceedings are responsible for service of all documents they file with the Clerk's Office. Proof of service of initial filings must be filed with the Board upon completion of service.
- c) Method of Service. Service may be effectuated by U.S. Mail or other mail delivery service, in person, by messenger, or as prescribed in Section 101.302(d), except for service of enforcement complaints and administrative citations which must be made personally, by registered or certified mail, or by messenger service. Proof of service of enforcement complaints and administrative citations must be filed with the Board upon completion of service.
- d) Affidavit or Certificate of Service. A proceeding is subject to dismissal, and parties are subject to sanctions in accordance with Section 101.800 of this Part, if service is not timely made. Proof of proper service is the responsibility of the party filing and serving the document. An affidavit of service or certificate of service must accompany all filings of all parties. A sample form of the affidavit of service and certificate of service is available at the Board's Offices (the locations of the Board's Offices are listed at 2 Ill. Adm. Code 2175.115) and may be obtained electronically at the Board's

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## Web site.

- e) Service of Amicus Curiae Briefs. Any person who files an amicus curiae brief with the Board in any proceeding must serve copies of that brief on all parties in accordance with this Section.
- f) Service of Comments of Participants in an Adjudicatory Proceeding. Participants are required to serve their comments upon the parties to the proceeding. The Board will consider the comments as time and the Act or other applicable law allow.
- g) Service on State Agencies. Service must be at the addresses listed below unless a specific person has an appearance on file with the Board.

- 1) Service on the Illinois Environmental Protection Agency (Agency). The Agency must be served at the following address:

Division of Legal Counsel  
 Illinois Environmental Protection Agency  
 1021 North Grand Avenue East  
 P.O. Box 19276  
 Springfield, IL 62794-9276

- 2) Service on Office of State Fire Marshal (OSFM). The OSFM must be served at:

Division of Petroleum and Chemical Safety  
 Office of the State Fire Marshal  
 1035 Stevenson Dr.  
 Springfield, IL 62703

- 3) Service on the Illinois Attorney General. The Office of the Attorney General must be served at:

Division Chief of Environmental Enforcement  
 Office of the Attorney General  
 188 West Randolph St., 20th Floor  
 Chicago, IL 60601

- 4) Service on the Illinois Department of Natural Resources (DNR) must be served at:

Office of Legal Services  
 Illinois Department of Natural Resources  
 524 S. Second St.  
 Springfield, IL 62701-1787

- 5) Service on the Illinois Department of Transportation (IDOT). IDOT must be served at:

Office of Chief Counsel

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## DOT Administration Building

2300 S. Dirksen Parkway, Room 300  
 Springfield, IL 62764

- 6) Service on Region V of the United States Environmental Protection Agency (USEPA). USEPA Region V must be served at:

USEPA, Region V  
 230 South Dearborn St.  
 Chicago, IL 60604

## Section 101.306 Incorporation of Documents by Reference

- a) Upon the separate written request of any person or on its own initiative, the Board or hearing officer may incorporate materials from the record of another Board docket into any proceeding. The person seeking incorporation must file with the Board 4 copies of the material to be incorporated. The Board or hearing officer may approve a reduced number of copies for documents incorporated in other Board dockets. The person seeking incorporation must demonstrate to the Board or the hearing officer that the material to be incorporated is authentic, credible, and relevant to the proceeding. Notice of the request must be given to all identified participants or parties by the person seeking incorporation.
- b) The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

## Section 101.308 Statutory Decision Deadlines and Waiver of Deadlines

- a) Petitions in the following proceedings each have a 120-day statutory decision deadline: Variances (Section 38 of the Act), Permit Appeals and UST Appeals (Section 40 of the Act), and Pollution Control Facility Siting Review (Section 40.1 of the Act). Other adjudicatory proceedings may be subject to decision deadlines as provided by law. Where the petitioner does not waive the decision deadline, the Board will proceed expeditiously to establish all hearing and filing requirements. Willful or unexcused failure to follow Board requirements on the deadlines will subject the party to sanctions pursuant to Subpart H of this Part. This Section will be strictly construed where there is a decision deadline unless the Board receives a waiver as set out in subsection (c).
- b) All waivers of a deadline for Board action must be filed as a separate document. Waivers must be clearly titled and state which type of waiver it is, identify the proceeding by name and docket number, and



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be signed by the party or by his authorized representative or attorney. A waiver of a statutory deadline does not preclude the Board from issuing an opinion or order prior to any decision deadline, nor does it preclude the filing of a motion seeking a decision on the matter.

- 1) Open Waiver. Waives the decision deadline completely and unequivocally until the petitioner elects to reinstate the 120-day decision period by filing a notice to reinstate. Upon proper filing of the notice, the decision period is reinstated. In accordance with Section 101.300(b)(4) of this Part, the decision period recommences as of the date the notice to reinstate is filed with the Board.
- 2) Time Certain Waiver. Waives the decision deadline until a time certain. The time certain may be expressed in length of days or to a specific calendar date. If expressed in length of days, day one will be the first day after the date upon which the current time clock expires. If the petitioner files a time certain waiver before the hearing date, the waiver must be for at least 40 days. If the extension is not renewed for at least 40 days prior to the decision deadline, the Board will set the matter for hearing.

## SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

## Section 101.400 Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings

- a) Appearances. A person who is a party in a Board adjudicatory proceeding may appear as follows:
  - 1) Individuals may appear on their own behalf or through an attorney-at-law licensed and registered to practice law. (Section 1 of the Attorney Act [705 ILCS 205/1])
  - 2) When appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law. (Section 1 of the Corporation Practice of Law Prohibition Act [705 ILCS 220/1] and Section 1 of the Attorney Act [705 ILCS 205/1])
  - 3) Attorneys who are licensed to practice in a state other than Illinois and who are not licensed and registered to practice in the State of Illinois may request to appear pro hac vice on a particular matter on a motion filed with the Board.
  - 4) Any attorney appearing in a representative capacity must file a separate written notice of appearance with the Clerk, together with proof of service and notice of filing of the appearance on all parties in the proceeding. Law firms, the Agency, and the Attorney General's Office when appearing before the Board must designate a lead attorney for purposes of phone and mail contact pertaining to the proceeding. Absent a separate written notice, the Board will designate the attorney whose signature appears

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- first on the complaint as the lead attorney.
- 5) Any person appearing before the Board may appear in a special limited capacity to contest jurisdiction.
  - b) Withdrawals. An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation must file a notice of withdrawal with the Clerk, together with proof of service and notice of filing on all parties or their representatives.
  - c) Substitution. Any attorney who substitutes for an attorney of record must file a written appearance pursuant to subsection (a) of this Section. That appearance must identify the attorney for whom the substitution is made. However, no attorney will be considered withdrawn from a proceeding until a formal withdrawal is filed in accordance with subsection (b) of this Section.
  - d) Any person may appear on behalf of himself or others in a rulemaking proceeding in accordance with 35 Ill. Adm. Code 102.100(b).

## Section 101.402 Intervention of Parties

- a) The Board may permit any person to intervene in any adjudicatory proceeding. If a person seeks to intervene in an adjudicatory proceeding, the person must file a motion to do so with the Clerk and serve a copy of the motion on all parties to the proceeding. The motion must set forth the grounds for intervention.
- b) In determining whether to grant a motion to intervene, the Board will consider the timeliness of the motion and whether intervention will unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding.
- c) Subject to subsection (b) of this Section, the Board will permit any person to intervene in any adjudicatory proceeding if:
  - 1) The person has an unconditional statutory right to intervene in the proceeding; or
  - 2) It may be necessary for the Board to impose a condition on the person.
- d) Subject to subsection (b) of this Section, the Board may permit any person to intervene in any adjudicatory proceeding if:
  - 1) The person has a conditional statutory right to intervene in the proceeding;
  - 2) The person may be materially prejudiced absent intervention; or
  - 3) The person is so situated that the person may be adversely affected by a final Board order.
- e) An intervenor will have all the rights of an original party to the adjudicatory proceeding, except that the Board may limit the rights of the intervenor as justice may require. The limits may include providing that: the intervenor is bound by Board and hearing officer orders already issued or by evidence already admitted; that the intervenor does not control any decision deadline; and that the intervenor cannot raise issues that were raised or might more properly have been raised at an earlier stage of the proceeding.

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**Section 101.403 Joinder of Parties**

- a) The Board, on its own motion or the motion of any party, may add a person as a party to any adjudicatory proceeding if:
- 1) A complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding;
  - 2) The person who is not already a party to the proceeding has an interest that the Board's order may affect; or
  - 3) It may be necessary for the Board to impose a condition on the person who is not already a party to the proceeding.
- b) The Board will not dismiss an adjudicatory proceeding for misjoinder of parties. The Board will not dismiss an adjudicatory proceeding for nonjoinder of persons who must be added to allow the Board to decide an action on the merits without first providing a reasonable opportunity to add the persons as parties. As justice may require, the Board may add new parties and dismiss misjoined parties at any stage of an adjudicatory proceeding.

**Section 101.404 Agency as a Party in Interest**

Pursuant to Section 30 of the Act, the Board may request that the Agency investigate any alleged violation of the Act, the regulations, any permit granted by the Agency, or any term or condition of any such permit and any such other investigations as the Board may deem advisable. Upon such request, the Board may designate the Agency as a party in interest in any ongoing proceeding in that matter. The designation of the Agency as a party in interest does not require the Agency to take a position on the merits of the proceeding.

**Section 101.406 Consolidation of Claims**

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary.

**Section 101.408 Severance of Claims**

Upon motion of any party or on the Board's own motion, in the interest of convenient, expeditious, and complete determination of claims, and where no material prejudice will be caused, the Board may sever claims involving any number of parties.

## SUBPART E: MOTIONS

**Section 101.500 Filing of Motions and Responses**

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- a) The Board may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, these rules, or the Illinois Code of Civil Procedure.
- b) All motions must be in writing, unless made orally on the record during a hearing or during a status conference, and must state whether directed to the Board or to the hearing officer. Motions that should be directed to the hearing officer are set out in Section 101.502 of this Part. All motions should be filed and served in conformance with Subpart C of this Part.
- c) Motions may be filed at any time unless otherwise specifically provided.
- d) Within 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period except in deadline driven proceedings where no waiver has been filed. Parties may request that the Board grant more time to respond by filing a motion for extension of time.
- e) The moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice. A motion for leave to file a reply must be filed with the Board within 14 days after service of the response.

**Section 101.502 Motions Directed to the Hearing Officer**

- a) The hearing officer has the authority to rule on all motions that are not dispositive of the proceeding. Examples of motions that hearing officers may not rule upon are motions to dismiss, motions to decide a proceeding on the merits, motions to strike any claim or defense for insufficiency or want of proof, motions claiming lack of jurisdiction, motions for consolidation, motions for summary judgment, and motions for reconsideration. Oral motions directed to a hearing officer at a status conference will be summarized in a written hearing officer order. The duties and authorities of the hearing officer are further set out in Section 101.610 of this Part.
- b) An objection to a hearing officer ruling made at hearing or any oral motion to the Board made at hearing will be deemed waived if not filed within 14 days after the Board receives the hearing transcript.
- c) Unless otherwise ordered by the Board, neither the filing of a motion, nor any appeal to the Board of a hearing officer order will stay the proceeding or extend the time for the performance of any act. Unless otherwise provided, all hearing officer orders will remain in effect during the pendency of any appeal to the Board.

**Section 101.504 Contents of Motions and Responses**

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All motions and responses must clearly state the grounds upon which the motion is made and must contain a concise statement of the position or relief sought. Facts asserted that are not of record in the proceeding must be supported by oath, affidavit, or certification in accordance with Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109]. A brief or memorandum in support of the motion or response may be included.

#### Section 101.506 Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading

All motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after the service of the challenged document, unless the Board determines that material prejudice would result.

#### Section 101.508 Motions to Board Preliminary to Hearing

Motions that a party desires the Board to rule on before hearing should be filed 21 days prior to the regularly scheduled Board meeting before the noticed hearing date. Any motion filed after the above prescribed time will be considered by the Board if time permits.

#### Section 101.510 Motions to Cancel Hearing

- a) Time to File. Unless the Board or the hearing officer orders otherwise the hearing officer may grant motions to cancel hearings that are filed no fewer than 10 days or, if all parties agree to the motion, 5 days before the scheduled hearing date. The hearing officer may grant a motion filed after the prescribed time only if the movant demonstrates that the movant will suffer material prejudice if the hearing is not canceled.
- b) Contents. All motions to cancel a hearing must set forth a proposed date to reschedule the hearing and must be supported by an affidavit of the person or persons with knowledge of the facts that support the motion. The affidavit must include the factual basis for the request to cancel and a complete status report that describes the progress of the proceeding and sets forth the number of cancellation requests previously granted to the movant. The hearing officer will grant the motion only if the movant demonstrates that the request to cancel is not the result of the movant's lack of diligence.
- c) In a proceeding for which there is a decision deadline, the hearing officer will deny a motion to cancel a hearing if the decision deadline does not allow enough time for the Board to reschedule the hearing, provide the required notice of the rescheduled hearing, complete the hearing, and deliberate and decide the matter.
- d) If the hearing officer grants a motion to cancel a hearing, the hearing officer will revise the schedule to complete the record in accordance with Section 101.612 of this Part. The hearing officer

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also will file the revised schedule with the Clerk and serve a copy of the revised schedule on all parties in accordance with Subpart C of this Part.

#### Section 101.512 Motions for Expedited Review

- a) Motions for expedited review must be directed to the Board. All motions for expedited review must contain a complete statement of the facts and reasons for the request and must be accompanied by an oath or affirmation attesting that the facts cited are true.
- b) In acting on a motion for expedited review, the Board will, at a minimum, consider all statutory requirements and whether material prejudice will result from the motion being granted or denied.
- c) The Board will grant a motion for expedited review consistent with available resources and decision deadlines.

#### Section 101.514 Motions to Stay Proceedings

- a) Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed, and in decision deadline proceedings, by a waiver of any decision deadline. A status report detailing the progress of the proceeding must be included in the motion. (See also Section 101.308 of this Part.)
- b) If the motion to stay is granted, at the close of the stay, the parties must file a status report in accordance with Subpart C of this Part. Additional requests for stay of the proceedings must be directed to the hearing officer.

#### Section 101.516 Motions for Summary Judgment

- a) Any time after the opposing party has appeared (or after the expiration of time within which any party is required to appear), but no fewer than 30 days prior to the regularly scheduled Board meeting before the noticed hearing date, a party may move the Board for summary judgment for all or any part of the relief sought. Any response to a motion for summary judgment must be filed within 14 days after service of the motion for summary judgment. The hearing officer may extend the filing and response deadlines contained in this subsection upon written motion by a party, consistent with any statutory deadlines.
- b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.
- c) Any party wishing to cancel a hearing pending decision on a motion for summary judgment must file a motion to cancel hearing pursuant to Section 101.510 of this Part.

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**Section 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders**  
Interlocutory appeals from a ruling of the hearing officer may be taken to the Board. The Board may consider an interlocutory appeal upon the filing of a written motion.

**Section 101.520 Motions for Reconsideration**

- a) Any motion for reconsideration or modification of a final Board order must be filed within 35 days after the receipt of the order. (See Section 101.902 of this Part.)
- b) Any response to a motion for reconsideration or modification must be filed within 14 days after the filing of the motion.
- c) A timely-filed motion for reconsideration or modification stays the effect of the final order until final disposition of the motion in accordance with Section 101.300(d)(2) of this Part.

**Section 101.522 Motions for Extension of Time**

The Board or hearing officer, for good cause shown on a motion after notice to the opposite party, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period, either before or after the expiration of time.

## SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

**Section 101.600 Hearings**

All hearings are open to the public and are held in compliance with the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.). The hearings are generally held in the county in which the source or facility is located unless otherwise ordered by the hearing officer. All hearings are subject to cancellation without notice. Interested persons may contact the Clerk's office or the hearing officer for information about the hearing. Parties, participants, and members of the public must conduct themselves with decorum.

**Section 101.602 Notice of Board Hearings**

- a) The Clerk will provide notice of all hearings, except for administrative citation hearings, in a newspaper of general circulation in the county in which the facility or pollution source is located, or where the activity in question occurred. Notice must be published at least 21 days prior to the hearing. If the proceeding involves federal rules which the State has been given delegated authority to administer, notice must be published at least 30 days prior to the hearing.
- b) Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer or

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*water facilities provided by a municipally owned or publicly regulated company, the Board shall at least 30 days prior to the scheduled date for the first hearing in such proceeding, give notice of the date, time, place, and purpose of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned [415 ILCS 5/33(c)].*

**Section 101.604 Formal Board Transcript**

All Board hearings will be transcribed by a certified court reporter in accordance with Section 32 of the Act or other applicable law. Any party or witness may file a motion with the hearing officer to correct the transcript within 21 days after receipt of the transcript in the Clerk's Office. Failure of any party or witness to timely file a motion to correct the transcript constitutes a waiver of the right to correct, unless material prejudice results.

**Section 101.606 Informal Recordings of the Proceedings**

Informal recording of Board proceedings is allowed as provided for in this Section. The hearing officer may prohibit audio or video recording at hearing if a witness refuses to testify on the grounds that the witness may not be compelled to testify if any portion of the testimony is to be broadcast or televised. If the hearing officer determines that recording is disruptive or detrimental to proper development of the record, the hearing officer may limit or prohibit audio and/or video recording.

**Section 101.608 Default**

- a) Failure of a party to appear at the hearing, or failure to proceed as ordered by the Board or hearing officer, will constitute default.
- b) If a respondent fails to appear at hearing, the complainant or petitioner must prove its prima facie case in order to prevail on the merits.

**Section 101.610 Duties and Authority of the Hearing Officer**

The hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to:

- a) Require parties to proceed to hearing and establish a schedule for, and notice and service of, any prefiled submission of testimony and written exhibits;
- b) Administer oaths and affirmations;
- c) Allow for the examination of or examine witnesses to ensure a clear and complete record;



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- d) Regulate the course of the hearing, including controlling the order of proceedings;
- e) Establish reasonable limits on the duration of the testimony and questioning of any witness, and limit repetitive or cumulative testimony and questioning;
- f) Determine that a witness is adverse, hostile, or unwilling pursuant to Section 101.624 of this Part;
- g) Issue an order compelling the answers to interrogatories or responses to other discovery requests;
- h) Order the production of evidence pursuant to Section 101.614 of this Part;
- i) Order the filing of any required record or recommendation in a manner which provides for a timely review and development of issues prior to the hearing and consistent with any statutory decision deadline;
- j) Initiate, schedule, and conduct a pre-hearing conference;
- k) Order a briefing and comment schedule and exclude late-filed briefs and comments from the record;
- l) Rule upon objections and evidentiary questions;
- m) Order discovery pursuant to Sections 101.614 and 101.616 of this Part;
- n) Rule on any motion directed to the hearing officer or deferred to the hearing officer by the Board in accordance with Section 101.502 of this Part;
- o) Set status report schedules;
- p) Require all participants in a rulemaking proceeding to state their positions with respect to the proposal; and
- q) Rule upon offers of proof and receive evidence and rule upon objections to the introduction of evidence.

**Section 101.612 Schedule to Complete the Record**

- a) The hearing officer must establish a schedule to complete the record. The schedule may provide dates and deadlines for pre-hearing conferences, discovery completion, and hearing and post-hearing submissions (including public comments). The schedule must provide for a completed record at least 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. The schedule must be in the form of a hearing officer order. The hearing officer must file the schedule with the Clerk and serve a copy of the schedule on all parties in accordance with Subpart C of this Part.
- b) The hearing officer may rule upon any motion to revise the schedule to complete the record. The hearing officer may grant the motion to the extent that the revised schedule provides for a completed record at least 30 days before the decision date or to prevent material prejudice. If the hearing officer grants a motion to revise the schedule, the hearing officer must file the revised schedule with the Clerk and serve a copy of the revised schedule on all parties in accordance with Subpart C of this Part. (See also Section 101.510(d))

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of this Part.)

**Section 101.614 Production of Information**

The hearing officer may, on his or her own motion or on the motion of any party, order the production of information that is relevant to the matter under consideration. The hearing officer will deny, limit or condition the production of information when necessary to prevent undue delay, undue expense, or harassment, or to protect materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.

**Section 101.616 Discovery**

The assigned hearing officer will set all time deadlines for discovery not already provided for in this Subpart consistent with Board deadlines. For purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent (see Section 101.100(b)). All discovery disputes will be handled by the assigned hearing officer.

- a) All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State pursuant to statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.
- b) If the parties cannot agree on the scope of discovery or the time or location of any deposition, the hearing officer has the authority to order discovery or to deny requests for discovery.
- c) All discovery must be completed at least 10 days prior to the scheduled hearing in the proceeding unless the hearing officer orders otherwise.
- d) The hearing officer may, on his or her own motion or on the motion of any party or witness, issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding, or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.
- e) Unless a claim of privilege is asserted, it is not a ground for objection that the testimony of a deponent or person interrogated will be inadmissible at hearing, if the information sought is reasonably calculated to lead to relevant information. Any appeals of rulings by the hearing officer regarding discovery must be in writing and filed with the Board prior to hearing.
- f) Failure to comply with any order regarding discovery may subject the offending persons to sanctions pursuant to Subpart H of this Part.
- g) If any person serves any request for discovery or answers to discovery for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or knowingly gives a false answer to discovery questions, the Board, on its own

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motion or the motion of a party, may impose sanctions pursuant to Subpart H of this Part.

- h) A party must amend any prior responses to interrogatories, requests for production, or requests for admission if the party learns that the response is in some material respect incomplete or incorrect, and the additional or corrected information has not otherwise been made known to the other parties during the discovery process or in writing.

**Section 101.618 Admissions**

- a) General. All requests to admit must be served upon a party no later than 35 days before hearing. All answers or objections to requests to admit must be served upon the party requesting the admission within 28 days after the service of the request.

- b) Extension of Time. In accordance with Sections 101.522 and 101.610 of this Part, the hearing officer may extend the time for filing any request, answer, or objection either before or after the expiration of time.

- c) Request to Admit. Any party serving a request to admit in accordance with subsection (d) or (e) must include the following language in the first paragraph of the request. "Failure to respond to the following requests to admit within 28 days may have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney."

- d) Request for Admission of Fact. A party may serve a written request for admission of the truth of specific statements of fact on any other party.

- e) Request for Admission of Genuineness of Document. A party may serve a written request for admission of the genuineness of documents on any other party. Copies of the document must be served unless the document has already been furnished in the present proceeding.

- f) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters, or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request must be answered within the period designated in the request. A denial must fairly address the substance of the requested admission.

- g) Partial Denial or Qualification. If good faith requires that a party deny a part of a matter for which an admission is requested, or if a

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part requires qualification, the party must specify the part which is denied or qualified and admit only the remainder.

- h) Objection. Any objection to a request or to any answer must be stated with specificity, and will be heard by the hearing officer upon notice and motion of the party making the request.

- i) Effect of Admission. Any admission made by a party pursuant to a request under this Section is for the purpose of the pending proceeding only. It does not constitute an admission by the party for any other purpose and may not be used against him in any other proceeding.

**Section 101.620 Interrogatories**

- a) Unless ordered otherwise by the hearing officer, a party may serve a maximum of 30 written interrogatories, including subparts, on any other party, no later than 35 days before hearing.

- b) Within 28 days after service thereof, the party to whom the interrogatory is directed must serve the answers and objections, if any, upon the party submitting the interrogatories. Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to. Answers must be signed by the person making them and objections must be signed by the attorney making them or, in the event of an individual representing himself or herself, the individual making them.

- c) Grounds for an objection to an interrogatory must be stated with specificity, and be accompanied by a copy of the interrogatory. Any ground that is not stated in a timely objection is waived unless it results in material prejudice or good cause for the delay shown.

**Section 101.622 Subpoenas and Depositions**

- a) Upon request by any party to a contested proceeding, the Clerk will issue subpoenas for the attendance of witnesses at a hearing or deposition. Subpoena forms are available at the Board's Chicago office. The person requesting the subpoena is responsible for completing the subpoena and serving it upon the witness.

- b) Service of the subpoena on the witness must be completed no later than 10 days before the date of the required appearance. A copy of the subpoena must be filed with the Clerk and served upon the hearing officer within 7 days after service upon the witness. Failure to serve both the Clerk and the hearing officer will render the subpoena null and void. Service and filing must be in accordance with Subpart C of this Part.

- c) Subpoenas may include a command to produce books, papers, documents, or other tangible things designated therein and relevant to the matter under consideration.

- d) The hearing officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or

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modify the subpoena if it is unreasonable or irrelevant. The hearing officer will rule upon motions to quash or modify material requested in the subpoena pursuant to subsection (c) of this Section in accordance with the standards articulated in Section 101.614 of this Part.

- e) Each witness subpoenaed by a party under this Section is entitled to receive witness fees from that party as provided in Section 4.3 of the Circuit Courts Act [705 ILCS 35/4.3].
- f) Unless the hearing officer orders otherwise, any witness subpoenaed for a deposition may be required to attend only in the county in which he resides or maintains an office address. In accordance with Supreme Court Rule 206(d), all depositions must be limited to 3 hours in length unless the parties and the non-party deponent by stipulation agree to a longer time frame or unless the hearing officer orders otherwise after a showing of good cause. (See Ill. S. Ct. Amended Rule 206(d).)
- g) Failure of any witness to comply with a subpoena will subject the witness to sanctions under this Part, or the judicial enforcement of the subpoena. The Board may, upon proper motion by the party requesting the subpoena, request the Attorney General to pursue judicial enforcement of the subpoena on behalf of the Board.

**Section 101.624 Examination of Adverse, Hostile or Unwilling Witnesses**

- a) Adverse Witnesses. At hearing, upon motion granted by the hearing officer, any party, or any person for whose immediate benefit the proceeding is prosecuted or defended, or any officers, directors, managing agents, or foremen of any party may be called as an adverse witness as allowed by the Code of Civil Procedure. (See Section 2-1102 of the Code of Civil Procedure.) Adverse witnesses may be examined as if under cross-examination. The party calling the adverse witness may rebut the testimony and may impeach the witness.
- b) Hostile or Unwilling Witnesses. If the hearing officer determines that any witness is hostile or unwilling, the witness may be examined by the party calling the witness as if under cross-examination.

**Section 101.626 Information Produced at Hearing**

In accordance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part.

- a) Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.
- b) Admissibility of Evidence. When the admissibility of evidence depends upon a good faith argument as to the interpretation of substantive law, the hearing officer will admit the evidence.
- c) Scientific Articles and Treatises. Relevant scientific or technical

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articles, treatises, or materials may be introduced into evidence by a party. The materials are subject to refutation or disputation through introduction of documentary evidence or expert testimony.

d) Written Testimony. Written testimony may be introduced by a party in a hearing only if provided to all other parties of record prior to the date of the hearing and only after the opposing parties have had an opportunity to object to the written testimony and to obtain a ruling on the objection to the written testimony and to obtain a ruling on the objections prior to its introduction. Written testimony may be introduced by a party only if the persons whose written testimony is introduced are available for cross-examination at hearing.

- e) Admission of Business Records. A writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, may be admissible as evidence of the act, transaction, occurrence, or event. To be admissible, the writing or record will have been made in the regular course of business, provided it was the regular course of business to make the memorandum or record at the time of the act, transaction, occurrence, or event, or within a reasonable time thereafter. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be admitted to affect the weight of the evidence, but will not affect admissibility. The term "business," as used in this subsection (e), includes businesses, professions, occupations, and callings of every kind.
- f) Prior Inconsistent Statements. Prior statements made under oath may be admitted to impeach a witness if the statement is inconsistent with the witness' testimony at hearing.
- g) Oral and Written Statements. Oral and written statements from participants may be taken at hearing in accordance with Section 101.628 of this Part.

**Section 101.628 Statements from Participants**

- a) Oral Statements. The hearing officer may permit a participant to make oral statements on the record when time, facilities, and concerns for a clear and concise hearing record so allow. The oral statements must be made under oath and are subject to cross-examination.
- b) Written Statements. Any participant may submit written statements relevant to the subject matter at any time prior to hearing or at hearing. Participants submitting such a statement will be subject to cross-examination by any party. Written statements submitted without the availability of cross-examination will be treated as public comment in accordance with subsection (c) of this Section and will be afforded lesser weight than evidence subject to cross-examination.
- c) Public Comments or Amicus Curiae Briefs. Participants may file public comments subject to the requirements of this Section and the hearing officer's schedule for completion of the record. The Board also

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allows for the filing of amicus curiae briefs by non-party participants. Amicus curiae briefs will be allowed in accordance with Section 101.110 of this Part.

- 1) Public comments must be filed within 14 days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. However, all public comments must be filed with the Board no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. Consistent with the burden of proof in a proceeding, the hearing officer may provide for differing filing deadlines with respect to post-hearing comments by different persons. Pursuant to hearing officer order, rebuttal public comments may be submitted.
- 2) All public comments must present arguments or comments based on evidence contained in the record. The comments may also present legal argument citing legal authorities.
- 3) Comments must be filed with the Board. Comments will be distributed to parties and the hearing officer by the Clerk's office.

**Section 101.630 Official Notice**

Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge and experience of the Board.

**Section 101.632 Site Visits**

Upon the request of any party or the Board's own motion, the Board may conduct a site visit to establish a more comprehensive record. If the site is part of an adjudicatory proceeding, the Board will notify all parties in advance.

## SUBPART G: ORAL ARGUMENT

**Section 101.700 Oral Argument**

- a) The Board may hear oral argument upon written motion of a party or the Board's own motion. The oral argument will be transcribed by a stenographer provided by the Board and become part of the record of the proceedings before the Board. The purpose of oral argument is to address legal questions. Oral argument is not intended to address new facts.
- b) Motions for oral argument must contain arguments supporting the grant of the motion for oral argument. In considering a motion for oral argument, the Board will consider, but is not limited to considering, the uniqueness of the issue or proceeding and whether the issue or proceeding involves a conflict of law.
- c) In any proceeding with a statutory decision deadline, the Board will

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deny the request for oral argument if there is insufficient time to schedule oral argument and allow time for the Board to issue its decision.

- d) If the Board grants the motion for oral argument, it will issue an order setting forth a schedule for oral argument that may include a briefing schedule. The brief will be limited to the issues for which oral argument was granted.

## SUBPART H: SANCTIONS

**Section 101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders**

- a) If any person unreasonably fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 or any order entered by the Board or the hearing officer, including any subpoena issued by the Board, the Board may order sanctions. The Board may order sanctions on its own motion, or in response to a motion by a party.
- b) Sanctions include the following:
  - 1) Further proceedings may be stayed until the order or rules are complied with, except in proceedings with a statutory decision deadline. Proceedings with a statutory decision deadline may be dismissed prior to the date on which decision is due;
  - 2) The offending person may be barred from filing any other pleading or other document relating to any issue to which the refusal or failure relates;
  - 3) The offending person may be barred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;
  - 4) As to claims or defenses asserted in any pleading or other document to which that issue is material, a judgment by default may be entered against the offending person or the proceeding may be dismissed with or without prejudice;
  - 5) Any portion of the offending person's pleadings or other documents relating to that issue may be stricken and, if appropriate, judgment may be entered as to that issue; and
  - 6) The witness may be barred from testifying concerning that issue.
- c) In deciding what sanction to impose the Board will consider factors including: the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person.

**Section 101.802 Abuse of Discovery Procedures**

The Board or the hearing officer may order that information obtained through abuse of discovery procedures be suppressed. If a person willfully obtains or attempts to obtain information by an improper discovery method, willfully



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obtains or attempts to obtain information to which he is not entitled, or otherwise abuses discovery rules, the Board or hearing officer may enter any order provided for in this Part.

## SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

## Section 101.902 Motions for Reconsideration

In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error. (See also Section 101.520 of this Part.)

## Section 101.904 Relief from and Review of Final Opinions and Orders

- a) Upon its own motion or motion of any party, the Board may correct clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission. The mistakes may be so corrected by the Board before the appeal is docketed in the appellate court. Thereafter, while the appeal is pending, the mistakes may be corrected only with leave of the appellate court. Any corrected order will be mailed to all parties and participants in that proceeding.
- b) On written motion, the Board may relieve a party from a final order entered in a contested proceeding, for the following:
  - 1) Newly discovered evidence that existed at the time of hearing and that by due diligence could not have been timely discovered;
  - 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
  - 3) Void order, such as an order based upon jurisdictional defects.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the order was entered but is not a continuation of the proceeding. The motion must be supported by oath or affidavit or other appropriate showing as to matters not of record. All parties or participants in the proceeding must be notified by the movant as provided by Section 101.304 of this Part.
- d) A motion under subsection (b) of this Section must be filed with the Board within one year after entry of the order except that a motion pursuant to subsection (b)(3) of this Section must be filed within a reasonable time after entry of the order.
- e) Any response to a motion under this Section must be filed within 14 days after the filing of the motion.
- f) A motion for reconsideration of a final Board order is not a prerequisite for the appeal of that final Board order.

## Section 101.906 Judicial Review of Board Orders

- a) Pursuant to Sections 29 and 41 of the Act, Supreme Court Rule 335, and Section 10-50 of the IAPA, judicial review of final Board orders is

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- b) available from the appellate court.
- c) For purposes of judicial review, final Board orders are appealable as of the date of service by the Board upon the appealing party.
- d) The procedure for stay of any final Board order during appeal will be as provided in Rule 335 of the Rules of the Supreme Court of Illinois (Ill. S. Ct. Rule 335).

## Section 101.908 Interlocutory Appeal

Upon motion of any party the Board may consider an interlocutory appeal in accordance with Supreme Court Rule 308 (Ill. S. Ct. Rule 308).

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Section 101.ILLUSTRATION B Citizen's Enforcement Case

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHN DOE, )  
 )  
Complainant, )  
 )  
V. ) PCB xx-xxx  
 ) (Enforcement-X)  
W.R. JONES Co., )  
 )  
Respondent. )

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Section 101.APPENDIX A Captions

Section 101.ILLUSTRATION A Enforcement Case

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
V. ) PCB xx-xxx  
 ) (Enforcement-X)  
W.R. JONES Co., )  
 )  
Respondent. )



POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

Section 101.ILLUSTRATION E Joint Petition for an Adjusted Standard

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
PETITION OF ABC COMPANY AND )  
THE ILLINOIS ENVIRONMENTAL ) AS xx-xxx  
PROTECTION AGENCY FOR ) (Adjusted Standard-X)  
ADJUSTED STANDARD FROM )  
35 Ill. Adm. Code XXX.XXX )

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

Section 101.ILLUSTRATION F Permit Appeal

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GENERAL COMPANY, )  
 )  
Petitioner, )  
 )  
v. ) PCB xx-xxx  
 ) (Permit Appeal-X)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

## Section 101. ILLUSTRATION G Underground Storage Tank Appeal

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GENERAL COMPANY, )  
 )  
Petitioner, )  
 )  
v. ) PCB xx-xxx  
 ) (UST Fund Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GENERAL COMPANY, )  
 )  
Petitioner, )  
 )  
v. ) PCB xx-xxx  
 ) (UST Appeal)  
OFFICE OF THE STATE )  
FIRE MARSHAL, )  
 )  
Respondent. )

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

## Section 101. ILLUSTRATION H Pollution Control Facility Siting Appeal

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GENERAL COMPANY, )  
 )  
Petitioner, )  
 )  
v. ) PCB xx-xxx  
 ) (Pollution Control Facility Siting Appeal)  
XXX COUNTY AND ABC DISPOSAL )  
COMPANY, )  
 )  
Respondents. )

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ABC DISPOSAL COMPANY, )  
 )  
Petitioner, )  
 )  
v. ) PCB xx-xxx  
 ) (Pollution Control Facility Siting Appeal)  
XXX COUNTY, )  
 )  
Respondent. )

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED RULES

## Section 101. ILLUSTRATION I Administrative Citation

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

COUNTY OF COOK,

Complainant,

γ.

ABC DISPOSAL AND  
RECYCLING, INC.,

Respondent.

—

— — —

—

— —

—

—

AC xx-xxx

IEPA or County Number

(Administrative Citation)

IN THE MATTER OF:

REVISION OF THE FLUORIDE

DRINKING WATER STANDARD:

PROPOSED AMENDMENTS TO

35 Ill. Adm. Code xxx.xxx

—

— —

—

1

Rxx-xxx

(Rulemaking-X)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED RULES

## Section 101. ILLUSTRATION J General Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

Section 101. ILLUSTRATION K Site-specific Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
PROPOSED SITE SPECIFIC WATER )  
POLLUTION REGULATIONS ) Rxx-xxx  
APPLICABLE TO XYZ ) (Site-Specific Rulemaking-X)  
UTILITIES COMPANY OF ILLINOIS )  
DISCHARGE TO XYZ CREEK: )  
35 Ill. Adm. Code )

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

Section 101. APPENDIX B Appearance Form

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Applicable Caption )  
(see Appendix A) ) docket number  
 )

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of ABC Company.

Attorney's Name

Name of Attorney and Firm  
Address  
Telephone Number

**BOARD NOTE:** The Board notes that all docket numbers consist of letter(s) followed by two numbers. The first two digit number is the fiscal year the matter was filed. Then the second number is the sequential number for that type of filing the Board has received that year. Persons making filings are not responsible for the Board docket number on the original filing. The Clerk of the Board will assign the appropriate docket number when the matter is filed. All filings in a matter that has been assigned a docket number should contain a docket number located as indicated on the examples above. The Board will also be designating its opinion and orders with the type of case and media involved in the matter. Where the above examples have the type of case preceded by "X" the Board will, for example if the case is dealing with a variance from certain water regulations, put the media, water, after variance to become "Variance-Water". Again, persons making filings need not place this on original filings. However, all filings in a matter that has been assigned the media should indicate that media in the location as in the above examples. Where there are specific procedural rules developed for specific types of cases, as in a "UST Appeal", persons making filings should follow those examples.

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

## Section 101.APPENDIX C Withdrawal of Appearance Form

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Applicable Caption )  
(see Appendix A) ) docket number  
 )

## NOTICE OF WITHDRAWAL OF APPEARANCE

I hearby give notice of withdrawal of my appearance as representative of  
ABC Company in this proceeding.

---

Attorney's Name

Name of Attorney and Firm  
Address  
Telephone Number

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

## Section 101.APPENDIX D Notice of Filing

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Applicable Caption )  
(see Appendix A) ) docket number  
 )

## NOTICE OF FILING

To: (List all persons served.)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the  
Pollution Control Board the [specify what document was filed] of [name of  
persons filing the document], a copy of which is herewith served upon you.

---

Name of Attorney or Other Representative

Date

Name  
Address  
Telephone Number

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED RULES

**Section 101.APPENDIX E Certificates Of Service****Section 101.ILLUSTRATION A Service by Non-Attorney****PROOF OF SERVICE**

I, the undersigned, on oath [or affirmation] state that I have served on the date of \_\_\_\_\_, the attached [describe document served], by [describe method of service], upon the following persons:

(list persons served)

[signature]

Notary Seal

SUBSCRIBED AND SWORN TO BEFORE ME this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED RULES

**Section 101.ILLUSTRATION B Service By Attorney****CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached [describe document served], by [describe method of service], upon the following persons:

(list of persons served)



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

## Section 101.APPENDIX F Notice of Withdrawal

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Applicable Caption )  
 (see Appendix A) ) docket number  
 )

## NOTICE OF WITHDRAWAL

NOW COMES [Petitioner's or Complainant's name], by one of its attorneys,  
 [Attorney's name] pursuant to 35 Ill. Adm. Code 101.302(1) hereby gives notice  
 of withdrawal of this case.

Attorney's Name

Name of Attorney and Firm  
 Address  
 Telephone Number

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

## Section 101.APPENDIX G Comparison of Former and Current Rules

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

## FORMER PART 101 CURRENT SECTION

101.100	101.100
101.101	101.200
	101.202
101.102	101.302
101.103	101.302
101.104	101.302
101.105	101.308
101.106	101.306
101.107	101.400
101.108	101.400
101.109	101.300
101.120	101.302
101.121	2 Ill. Adm. Code 2175.210 (current)
101.122	2 Ill. Adm. Code 2175.215 (current)
101.140	101.304(a)
101.141	101.304
101.142	101.304(c)
101.143	101.304(d)
101.144	101.300
101.160	2 Ill. Adm. Code 2175.300 (current)
101.161	130.Subpart A
	130.Subpart D
101.162	2 Ill. Adm. Code 2175.305 (current)
101.180	101.700
	2 Ill. Adm. Code 2175.210 (current)
101.181	2 Ill. Adm. Code 2175.130 (current)
101.200	101.114
	101.612
101.220	101.610
101.221	101.606
101.241	101.500
101.242	101.504
101.243	101.506
101.244	101.516
101.245	101.508
	101.510
101.246	101.520
	101.902
101.247	101.502
	101.518
	101.522

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

101.260  
101.261  
101.280  
  
101.281  
101.300  
101.301  
101.302  
101.304  
101.Appendix A Illustration A  
101.Appendix A Illustration B  
101.Appendix A Illustration C  
101.Appendix A Illustration D  
  
101.Appendix A Illustration E  
101.Appendix A Illustration F  
101.Appendix B  
101.Appendix C  
101.Appendix D  
101.Appendix E Illustration A  
101.Appendix E Illustration B  
  
101.622  
101.614  
101.608  
101.800  
101.802  
101.520  
101.904  
101.906  
101.908  
101.Appendix A Illustration J  
101.Appendix A Illustration K  
101.Appendix A Illustration D  
101.Appendix A Illustration C  
101.Appendix A Illustration F  
101.Appendix A Illustration A  
101.Appendix A Illustration I  
101.Appendix B  
101.Appendix C  
101.Appendix D  
101.Appendix E Illustration A  
101.Appendix E Illustration B

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Hearings Pursuant to Specific Rules  
2) Code Citation: 35 Ill. Adm. Code 106  
3) Section Numbers:  
106.100 Repealed  
106.102 Repealed  
106.103 Repealed  
106.104 Repealed  
106.105 Repealed  
106.106 Repealed  
106.107 Repealed  
106.200 Repealed  
106.201 Repealed  
106.202 Repealed  
106.203 Repealed  
106.204 Repealed  
106.301 Repealed  
106.302 Repealed  
106.303 Repealed  
106.304 Repealed  
106.305 Repealed  
106.306 Repealed  
106.401 Repealed  
106.402 Repealed  
106.403 Repealed  
106.404 Repealed  
106.405 Repealed  
106.406 Repealed  
106.407 Repealed  
106.408 Repealed  
106.409 Repealed  
106.410 Repealed  
106.411 Repealed  
106.412 Repealed  
106.413 Repealed  
106.414 Repealed  
106.415 Repealed  
106.416 Repealed  
106.501 Repealed  
106.502 Repealed  
106.503 Repealed  
106.504 Repealed  
106.505 Repealed  
106.506 Repealed  
106.507 Repealed  
106.601 Repealed  
106.602 Repealed

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED REPEALER

106.603 Repealed  
106.604 Repealed  
106.605 Repealed  
106.701 Repealed  
106.702 Repealed  
106.703 Repealed  
106.704 Repealed  
106.705 Repealed  
106.706 Repealed  
106.707 Repealed  
106.708 Repealed  
106.709 Repealed  
106.710 Repealed  
106.711 Repealed  
106.712 Repealed  
106.713 Repealed  
106.714 Repealed  
106.715 Repealed  
106.801 Repealed  
106.802 Repealed  
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106.804 Repealed  
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106.806 Repealed  
106.807 Repealed  
106.808 Repealed  
106.901 Repealed  
106.902 Repealed  
106.903 Repealed  
106.904 Repealed  
106.905 Repealed  
106.906 Repealed  
106.907 Repealed  
106.910 Repealed  
106.911 Repealed  
106.912 Repealed  
106.913 Repealed  
106.914 Repealed  
106.915 Repealed  
106.916 Repealed  
106.920 Repealed  
106.921 Repealed  
106.922 Repealed  
106.923 Repealed  
106.924 Repealed  
106.925 Repealed

APPENDIX A

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED REPEALER

- 4) Statutory Authority: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, and 39.5 of the Environmental Protection Act (Act) [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, and 39.5] and authorized by Section 26 and 39.5 of the Act [415 ILCS 5/26 and 39.5].
- 5) Effective Date of Repealer: January 1, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this repealer contain incorporations by reference? No
- 8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5326
- 10) Has JCAR issued a Statement of Objection to this repealer? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter? Yes
- 13) Will this repealer replace emergency rules currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Repealer: In an effort to make the Board more accessible to the lay person, the Board proposes new user-friendly procedural rules that simplify, clarify, streamline and update the rules where necessary.
- 16) Information and questions regarding this adopted repealer shall be directed to:

Carol Sudman  
PCB  
600 S. Second St., Suite 402  
Springfield, Illinois 62701  
(217) 524-8509

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Identification and Protection of Trade Secrets

2) Code Citation: 35 Ill. Adm. Code 120

3) Section Numbers: Adopted Action:

120.101 Repealed  
 120.102 Repealed  
 120.103 Repealed  
 120.201 Repealed  
 120.202 Repealed  
 120.203 Repealed  
 120.210 Repealed  
 120.215 Repealed  
 120.220 Repealed  
 120.225 Repealed  
 120.230 Repealed  
 120.240 Repealed  
 120.245 Repealed  
 120.250 Repealed  
 120.260 Repealed  
 120.265 Repealed  
 120.270 Repealed  
 120.301 Repealed  
 120.305 Repealed  
 120.310 Repealed  
 120.315 Repealed  
 120.320 Repealed  
 120.325 Repealed  
 120.330 Repealed  
 120.340 Repealed  
 120.350 Repealed  
 120.401 Repealed

## APPENDIX A

4) Statutory Authority: Implementing and authorized by Sections 7 and 7.1 of the Environmental Protection Act [415 ILCS 5/7 and 7.1].

5) Effective Date of Repeal: January 1, 2001

6) Does this rulemaking contain an automatic repeal date? No

7) Does this repealer contain incorporations by reference? No

8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED REPEALER

Ill. Reg. 5411

10) Has JCAR issued a Statement of Objection to this repealer? No

11) Differences between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter? Yes

13) Will this repealer replace emergency rules currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Repealer: In an effort to make the Board more accessible to the lay person, the Board proposes new user-friendly procedural rules that simplify, clarify, streamline and update the rules where necessary.

16) Information and questions regarding this adopted repealer shall be directed to:

Carol Sudman  
 PCB  
 600 S. Second St., Suite 402  
 Springfield, Illinois 62701  
 217/524-8509

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Identification and Protection of Trade Secrets and Other Non-Disclosable Information

- 2) Code Citation: 35 Ill. Adm. Code 130

- 3) Section Numbers: Adopted Action:

130.100	New Section
130.102	New Section
130.104	New Section
130.106	New Section
130.108	New Section
130.110	New Section
130.200	New Section
130.201	New Section
130.202	New Section
130.203	New Section
130.204	New Section
130.206	New Section
130.208	New Section
130.210	New Section
130.212	New Section
130.214	New Section
130.216	New Section
130.218	New Section
130.220	New Section
130.300	New Section
130.302	New Section
130.304	New Section
130.306	New Section
130.308	New Section
130.310	New Section
130.312	New Section
130.314	New Section
130.400	New Section
130.402	New Section
130.404	New Section
130.406	New Section
130.408	New Section
APPENDIX A	
	New Section

- 4) Statutory Authority: Implementing Sections 7 and 7.1 of the Environmental Protection Act (Act) [415 ILCS 5/7 and 7.1] and authorized by Sections 7, 7.1, 26, and 27 of the Act [415 ILCS 5/7, 7.1, 26, 27].

- 5) Effective Date of Rules: January 1, 2001

- 6) Does this rulemaking contain an automatic repeal date? No

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

- 7) Do these rules contain incorporations by reference? No

- 8) The adopted rules, including any material incorporated by reference, are on file in the Board's Chicago office and are available for public inspection.

- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5426.

- 10) Has JCAR issued a Statement of Objection to these rules? No

- 11) Differences between proposal and final version: The Board's review of comments on the first notice version of Part 130 revealed a consistent theme—a preference for many aspects of the Board's current procedural rules on trade secrets (35 Ill. Adm. Code 120), and concern that the first notice rules would require the State agencies and the owners of articles to waste resources. For example, commentors did not like automatically requiring the owner of an article to justify the trade secret claim when it makes the claim, thereby potentially requiring the State agency decision on the claim 45 days later. See Sections 130.200 and 130.206. Commentors preferred the approach under the current rules of allowing the trade secret claim to be made without simultaneously providing the justification, and letting the State agency require the justification later on when it is needed, such as when the State agency receives a request from the public for a copy of the article. See 35 Ill. Adm. Code 120.201(a)(3), 120.210, 120.215, and 120.220.

In short, comment on Part 130 as proposed for first notice showed that the Board's current trade secret rules do not need an overhaul, but rather discrete but important amendments. For example, the Board, for the first time, defines "emission data" to clarify the statutory requirement (see 415 ILCS 5/7(c) (1998)) that this information be available to the public. See Section 130.110. The Board also retains the concept from the first notice proposal of increasing the State agencies' trade secret determination deadline from the current 10 working days (see 35 Ill. Adm. Code 120.225) to 45 days (see Section 130.206(a)) after receipt of a complete statement of justification for the trade secret claim.

The Board makes several other significant changes based on comment. First, the State agency's failure to timely determine a trade secret claim no longer results in automatic denial of the claim. Instead, the State agency must continue to protect the article as a trade secret until it makes the determination. See Section 130.214(c). Second, the Board at first notice required owners of articles with pending trade secret claims to file new claims within 180 days after the new rules became effective or lose trade secret protection. The Board amends Section 130.220(b) so that trade secret claims pending as of the date the proposed rules become effective (i.e., January 1, 2001) are deemed pending under the new rules



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

with unlimited waivers of any deadlines for decision. Third, the owner of an article seeking trade secret protection is not required to waive any statutory deadline for the State agency to decide an underlying proceeding or matter, such as a permit application or permit appeal, until the owner files a statement of justification for the trade secret claim. See Section 130.204(a). The waiver must extend the statutory deadline for a period equal to the period by which the decision on the underlying proceeding or matter is delayed due to any subsequent trade secret justification and determination process plus 45 days. See Section 130.204(b). Finally, the Board clarifies that the trade secret rules apply with respect to articles submitted to the Board, the Agency, or DNR. See Sections 130.100(b) and 130.104(a).

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes

13) Will these rules replace emergency rules currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: Part 130 sets forth procedures to identify and protect trade secrets and other non-disclosable information, consistent with Sections 7 and 7.1 of the Act (415 ILCS 5/7 and 7.1 (1998)). Part 130 largely reflects the Board's current provisions on trade secrets (35 Ill. Adm. Code 120) and other non-disclosable information (35 Ill. Adm. Code 101.161), with a few notable exceptions.

For the first time, the Board defines "emission data" to clarify what may be protected and what must be available for public review. The Board also relaxes the stringent 10-day deadline within which the Board, the Agency, and DNR must determine whether an article represents a trade secret. See Section 130.206(a) (45-day deadline).

In addition, the proposed rules require that the owner of an article seeking trade secret protection submit a letter claiming trade secret protection at the time it submits the article to the State agency. If the owner fails to do so, the article is considered a matter of general public knowledge and cannot be protected as a trade secret. See Section 130.200(a). Preparing a claim letter is not burdensome and requiring that one arrive with the article allows the State agency to properly manage the article from the outset.

A more detailed discussion of these proposed rules is contained in the Board's opinion and order in R00-20, which the Board adopted on December 21, 2000. The opinion and order are available from the Board's Chicago office and on the Board's Web site.

16) Information and questions regarding these adopted rules shall be directed

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

to:

Carol Sudman  
PCB  
600 S. Second St., Ste. 402  
Springfield, Illinois 62701  
(217) 524-8509

The opinion and order for this rule (R00-20) are available on the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). For copies please contact:

Dorothy Gunn, Clerk  
PCB  
100 W. Randolph St., Suite 11-500  
Chicago IL 60601  
(312) 814-3620

The full text of the adopted rules begins on the next page:

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

## TITLE 35: ENVIRONMENTAL PROTECTION

## SUBTITLE A: GENERAL PROVISIONS

## CHAPTER I: POLLUTION CONTROL BOARD

## PART 130

IDENTIFICATION AND PROTECTION OF TRADE SECRETS AND OTHER  
NON-DISCLOSABLE INFORMATION

## SUBPART A: GENERAL PROVISIONS

Section  
130.100  
130.102  
130.104  
130.106  
130.108  
130.110

Purpose and Applicability  
Additional Procedures  
Definitions and Severability  
Segregation of Articles  
Disposal of Articles  
Articles Containing Emission Data

SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES THAT REPRESENT  
TRADE SECRETS

Section  
130.200  
130.201  
130.202  
130.203  
130.204  
130.206  
130.208  
130.210  
130.212  
130.214  
130.216  
130.218  
130.220

Initiation of a Claim that an Article Represents a Trade Secret  
State Agency Request for Justification of Claims  
Time Limit for Delayed Submission of Justification  
Contents of Statement of Justification  
Waiver of Statutory Deadlines  
Deadline for State Agency Trade Secret Determination  
Standards for State Agency Determination  
State Agency Actions Following a Negative Determination  
State Agency Actions Following a Positive Determination  
Review of State Agency Trade Secret Determination  
Effect of a Determination of Trade Secret Status on Other State Agencies  
Status of Article Determined or Claimed to Represent a Trade Secret Before January 1, 2001  
Extension of Deadlines to Participate in Proceedings

SUBPART C: PROCEDURES FOR PROTECTING ARTICLES THAT REPRESENT  
TRADE SECRETS

Section  
130.300  
130.302  
130.304  
130.306  
130.308  
130.310

Applicability  
Owner's Responsibility to Mark Article  
State Agency's Responsibility to Mark Article  
Transmission of Article Between State Agencies  
Public Access to Information Related to Article  
Access to Claimed or Determined Article

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

130.312 Unauthorized Disclosure or Use of Article  
130.314 Limitation on Copying Article

## SUBPART D: NON-DISCLOSABLE INFORMATION OTHER THAN TRADE SECRETS

Section  
130.400 General  
130.402 Who May View Non-Disclosable Information  
130.404 Application for Non-Disclosure  
130.406 Public Inspection  
130.408 Board Order

## APPENDIX A Comparison of Former and Current Rules

AUTHORITY: Implementing Sections 7 and 7.1 of the Environmental Protection Act (Act) [415 ILCS 5/7 and 7.1] and authorized by Sections 7, 7.1, 26, and 27 of the Act [415 ILCS 5/7, 7.1, 26, 27].

SOURCE: Subparts A, B, and C originally adopted in R81-30 at 7 Ill. Reg. 16149, effective November 23, 1983. Subpart D originally adopted in R88-5(A) at 13 Ill. Reg. 12055, effective July 10, 1989; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 516, effective JAN 1 1991.

## SUBPART A: GENERAL PROVISIONS

## Section 130.100 Purpose and Applicability

- a) Section 7(a) of the Act provides that all files, records, and data of the Agency, the Board, and the Department shall be open for reasonable public inspection except for information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; and information concerning secret manufacturing processes or confidential data submitted by any person under the Act. [415 ILCS 5/7(a)]
- b) This Part establishes procedures to identify and protect trade secrets and other non-disclosable information.
- 1) Subpart A of this Part sets forth general provisions that apply with respect to both trade secrets and other non-disclosable information. References in this Subpart to non-disclosable information other than trade secrets apply only to proceedings before the Board.
- 2) Subparts B and C of this Part address only trade secrets. Those Subparts apply to articles submitted or otherwise obtained by the Board, the Illinois Environmental Protection Agency, or DNR.
- 3) Subpart D of this Part addresses only non-disclosable information other than trade secrets. That Subpart applies only to filings of articles with the Board.

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

**Section 130.102 Additional Procedures**

The Illinois Environmental Protection Agency and DNR each may adopt additional procedures that are not inconsistent with this Part to protect articles that are claimed or determined to represent a trade secret.

**Section 130.104 Definitions and Severability**

- a) Definitions. For the purpose of this Part, "State agency" refers to the Board, the Illinois Environmental Protection Agency, or DNR. Other words and terms have the meanings set forth in 35 Ill. Adm. Code 101.Subpart B, unless otherwise provided or unless the context clearly indicates otherwise.
- b) Severability. If any provision of this Part or its application to any person is adjudged invalid, the adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

**Section 130.106 Segregation of Articles**

Any article, or any page or portion thereof, that is claimed or determined to represent a trade secret or other non-disclosable information must be kept segregated from articles that are open to public inspection, and must be kept secure from unauthorized access.

**Section 130.108 Disposal of Articles**

The State agency must dispose of an article that is claimed or determined to represent a trade secret or other non-disclosable information, and any copies made of that article, according to its application for authority to dispose of State records approved by the State Records Commission.

**Section 130.110 Articles Containing Emission Data**

- a) *All emission data reported to or otherwise obtained by the Illinois Environmental Protection Agency, the Board, or DNR in connection with any examination, inspection or proceeding under the Act shall be available to the public to the extent required by the federal Clean Air Act Amendments of 1977 (P.L. 95-95) as amended [415 ILCS 5/7(c)].*
  - b) For purposes of this Section, "emission data" means:
    - 1) The identity, amount, frequency, concentration, or other characteristics (related to air quality) of any contaminant that:
      - A) Has been emitted from an emission unit;
      - B) Results from any emission by the emission unit;
      - C) Under an applicable standard or limitation, the emission unit was authorized to emit; or
      - D) Is a combination of any of the items described in subsection (b)(1)(A), (B), or (C) of this Section.

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- 2) The name, address (or description of the location), and the nature of the emission unit necessary to identify the emission unit, including a description of the device, equipment, or operation constituting the emission unit.
- c) In addition to subsection (b) of this Section, information necessary to determine or calculate emission data, including rate of operation, rate of production, rate of raw material usage, or material balance, will be deemed to represent emission data for the purposes of this Section if the information is contained in a permit to ensure that the permit is practically enforceable.

**SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES THAT REPRESENT TRADE SECRETS****Section 130.200 Initiation of a Claim that an Article Represents a Trade Secret**

- a) The owner of an article may claim that the article represents a trade secret only by submitting to the State agency the claim letter required by subsection (b)(1) of this Section at the time the owner submits the article to the State agency. If the owner of the article submits the claim letter required by subsection (b)(1) of this Section, the article will be considered a matter of general public knowledge and cannot be protected as a trade secret.
- b) The owner of an article seeking trade secret protection must submit the following information to the State agency at the time the owner submits the article to the State agency:
  - 1) A claim letter that clearly states the name of the article, briefly describes the article, and states that the article is claimed to represent a trade secret, as defined in 35 Ill. Adm. Code 101.Subpart B and the Act; and
  - 2) A copy of the article marked as provided in Section 130.302 of this Part.
- c) The owner of an article seeking trade secret protection must submit to the State agency a statement of justification for the claim meeting the requirements of Section 130.203 of this Subpart. The owner of the article may submit the statement of justification at the time the owner submits the article, or at a later time, but in no event later than the time limit established pursuant to Section 130.202 of this Subpart.
- d) If the State agency is provided with a claim letter required by subsection (b)(1) of this Section, the State agency must consider the article a trade secret and must protect it from disclosure pursuant to Subpart C of this Part until the State agency makes a final determination and the appeal time has expired.
- e) The owner of an article seeking trade secret protection is not required to serve any other persons with the article or the page or portion thereof for which the owner seeks trade secret protection.

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**Section 130.201 State Agency Request for Justification of Claims**

- a) The State agency may request that the owner of an article claimed to represent a trade secret submit a statement of justification meeting the requirements of Section 130.203 of this Subpart. The State agency may make the request when the article is submitted or obtained, or at any later time.
- b) The request under subsection (a) of this Section must be in writing. The State agency must set forth in the request the reasoning for the request. Reasons for the request may include the following:
  - 1) The State agency has received or reasonably expects to receive a request from the public to disclose the article;
  - 2) The article is required to be available to the public in a proceeding before the State agency;
  - 3) Information within the article is required to be contained in a permit issued by the State agency;
  - 4) To facilitate public participation in a proceeding before the State agency;
  - 5) A regulation requires that the State agency determine whether the article represents a trade secret at the time that the article is submitted to or obtained by the State agency; or
  - 6) Determining the validity of the claim will facilitate the timely performance of State agency responsibilities.

**Section 130.202 Time Limit for Delayed Submission of Justification**

- a) Within 10 working days after the date on which the owner of an article claimed to represent a trade secret receives a State agency request for justification under Section 130.201 of this Subpart, the owner must submit to the State agency a statement of justification meeting the requirements of Section 130.203 of this Subpart.
- b) The State agency may extend the time period under subsection (a) of this Section for a second period of 10 working days if, within the first 10 day period, the owner of the article requests an extension and demonstrates that the extension is necessary to complete the statement of justification.

**Section 130.203 Contents of Statement of Justification**

A statement of justification must contain the following:

- a) A detailed description of the procedures used by the owner to safeguard the article from becoming available to persons other than those selected by the owner to have access thereto for limited purposes;
- b) A detailed statement identifying the persons or class of persons to whom the article has been disclosed;
- c) A certification that the owner has no knowledge that the article has ever been published or disseminated or has otherwise become a matter

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- d) of general public knowledge;
- e) A detailed discussion of why the owner believes the article to be of competitive value; and
- f) Any other information that will support the claim.

**Section 130.204 Waiver of Statutory Deadlines**

- a) When the owner of an article seeking trade secret protection submits a statement of justification under this Subpart to the State agency, the owner must simultaneously submit to the State agency a waiver of any statutory deadline for the State agency to decide the underlying proceeding or matter, such as a permit application.
- b) The waiver under subsection (a) of this Section must extend the statutory deadline for a period equal to the period by which the decision on the underlying proceeding or matter is delayed due to any subsequent trade secret justification and determination process plus 45 days.

**Section 130.206 Deadline for State Agency Trade Secret Determination**

- a) The State agency must determine whether the article represents a trade secret within 45 days after the date it receives a complete statement of justification as prescribed in Section 130.203 of this Subpart.
- b) The owner of an article seeking trade secret protection may extend the time period for the State agency to determine whether the article represents a trade secret by submitting to the State agency a waiver of the deadline for the State agency to determine whether the article represents a trade secret.

**Section 130.208 Standards for State Agency Determination**

- a) An article will be determined to represent a trade secret if:
  - 1) The owner has complied with the procedures for making a claim and justification as prescribed by this Subpart; and
  - 2) The statement of justification demonstrates that:
    - A) The article has not been published, disseminated or otherwise become a matter of general public knowledge; and
    - B) The article has competitive value.
- b) There will be a rebuttable presumption that an article has not been published, disseminated or otherwise become a matter of general public knowledge, if:
  - 1) The owner has taken reasonable measures to prevent the article from becoming available to persons other than those selected by the owner to have access to the article for limited purposes; and
  - 2) The statement of justification contains a certification that the owner has no knowledge that the article has ever been published, disseminated, or otherwise become a matter of general public knowledge.

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- c) The State agency may determine that any page or portion of the article represents a trade secret without finding that the entire article represents a trade secret.

**Section 130.210 State Agency Actions Following a Negative Determination**

- a) If the State agency determines that an article, or any page or portion thereof, does not meet the standards specified in Section 130.208(a)(1) or (2) of this Subpart, the State agency must deny the claim for trade secret protection for the article or page or portion thereof, and must give written notice of the determination to the owner of the article and any requester pursuant to subsection (b) of this Section.
- b) Written notice that the State agency denied a claim for trade secret protection must be given by certified mail, return receipt requested, and must contain the following information:
- 1) A statement of the State agency's reasoning for denying the claim;
  - 2) A notification that the State agency determination may be reviewed pursuant to Section 130.214 of this Subpart; and
  - 3) A notification that the State agency will cease protecting the article, or the page or portion thereof, as a trade secret unless the State agency is served with notice of the filing of a petition for review of the State agency's determination within 35 days after service of the notice of denial on the owner and any requester.
- c) If the State agency is served with notice of the filing of a petition for review of its determination within 35 days after service of the notice of denial on the owner and any requester, the State agency must notify the requester of the action and must continue to protect the article, or the page or portion thereof, pursuant to Subpart C of this Part until the State agency receives official notification of a final order by a reviewing body with proper jurisdiction that does not reverse the State agency determination and that is not subject to further appeal.
- d) If the State agency does not receive the notification of a petition for review within 35 days after service of the notice of denial on the owner and any requester or does receive official notification of a final, non-appealable action that does not reverse the State agency determination, the article will not be protected pursuant to Subpart C of this Part and the State agency must so notify the owner and any requester by certified mail, return receipt requested.

**Section 130.212 State Agency Actions Following a Positive Determination**

- a) If the State agency determines that an article, or any page or portion thereof, meets the standards specified in subsection 130.208(a)(1) and (2) of this Subpart, the State agency must grant the claim for trade

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- b) Written notice of the granting of a claim for trade secret protection must be given by certified mail, return receipt requested, and must contain the following information:

- 1) A statement of the State agency's reasoning for granting the claim;
  - 2) A notification that the State agency's determination is available for review pursuant to Section 130.214 of this Subpart; and
  - 3) A notification that the article, or the page or portion thereof, will be protected pursuant to Subpart C of this Part until the State agency receives official notification of a final order by a reviewing body that reverses the State agency determination and that is not subject to further appeal.
- c) The State agency must continue to protect an article, or the page or portion thereof, for which trade secret protection has been granted pursuant to Subpart C of this Part until the State agency receives official notification of a final order by a reviewing body with proper jurisdiction that reverses the State agency determination and that is not subject to further appeal.

**Section 130.214 Review of State Agency Trade Secret Determination**

- a) An owner or requester who is adversely affected by a final determination of the Illinois Environmental Agency or DNR pursuant to this Subpart may petition the Board to review the final determination within 35 days after service of the determination. Appeals to the Board will be pursuant to 35 Ill. Adm. Code 105. Subparts A and B.
- b) An owner or requester who is adversely affected by a final determination of the Board pursuant to this Subpart, may obtain judicial review from the appellate court by filing a petition for review pursuant to Section 41 of the Act [415 ILCS 5/41].
- c) If the State agency fails to make a final determination within the time limits prescribed by this Subpart, the State agency must continue to protect the article as set forth in Subpart C of this Part until the State agency issues a final determination pursuant to this Subpart.

**Section 130.216 Effect of a Determination of Trade Secret Status on Other State Agencies**

- a) Except as provided in subsection (b) of this Section, a claim or determination by one State agency that an article represents a trade secret made pursuant to this Subpart will apply to that same article when in the possession of either of the other two agencies.
- b) When an article described in subsection (a) of this Section is the subject of a review before the Board pursuant to Section 130.214(a) of



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this Subpart, the article will be treated as a trade secret only unless or until the Board determines that the article does not represent a trade secret.

#### Section 130.218 Status of Article Determined or Claimed to Represent a Trade Secret Before January 1, 2001

- a) Any article that was determined by a State agency before January 1, 2001 to represent a trade secret in accordance with State agency procedures adopted pursuant to the IAPA will be deemed to have been determined to represent a trade secret for the purposes of this Part. The State agency must protect the article in accordance with Subpart C of this Part
- b) If a State agency possesses an article that was claimed before January 1, 2001 to represent a trade secret and the State agency did not determine before January 1, 2001 whether the article represents a trade secret in accordance with procedures adopted pursuant to the IAPA, the article is deemed to have been claimed to represent a trade secret for the purposes of this Part. These claims are deemed pending with unlimited waivers of any deadlines for decisions.

#### Section 130.220 Extension of Deadlines to Participate in Proceedings

- a) Upon the State agency's finding that a person has satisfied the requirements of subsection (b) of this Section, the State agency must extend any deadline for the person to participate in the proceeding before the State agency until 10 days after the State agency determines the trade secret status of the article.
- b) The person seeking an extension to participate in a proceeding before the State agency has the burden to demonstrate that the person will be adversely affected in the proceeding due to the timing of the State agency's trade secret determination, that the person could not have avoided the resulting delay by making an earlier request, and that the article is relevant to the proceeding.

#### SUBPART C: PROCEDURES FOR PROTECTING ARTICLES THAT REPRESENT TRADE SECRETS

##### Section 130.300 Applicability

Any article that is claimed or determined to represent a trade secret pursuant to Subpart B of this Part must be protected from unauthorized disclosure pursuant to this Subpart.

##### Section 130.302 Owner's Responsibility to Mark Article

- a) When an entire article is claimed to represent a trade secret, the owner must mark the article with the words "Trade Secret" in red ink on the face or front of the article.

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- b) When less than an entire article is claimed to represent a trade secret, the owner must:
  - 1) Mark the article with the words "Trade Secret" in red ink on the face or front of the article;

- 2) Indicate on the face or front of the article which page or portion of the article is claimed to represent a trade secret;
- 3) Mark every page or portion of the article that is claimed to represent a trade secret with the words "Trade Secret," and
- 4) Furnish the State agency with a second copy of the article that is marked pursuant to subsections (b)(1) and (2) of this Section and from which the page or portion of the article that is claimed to represent a trade secret is deleted.

#### Section 130.304 State Agency's Responsibility to Mark Article

- a) When an entire article is determined to represent a trade secret pursuant to Section 130.208 of this Part, the State agency must mark the article with the word "DETERMINED" in red ink on the face or front of the article and must also mark any claim letter submitted for the article.
- b) When less than an entire article is determined to represent a trade secret pursuant to Section 130.208 of this Part, the State agency must:
  - 1) Mark the article with the word "DETERMINED" in red ink on the face or front of the article;
  - 2) Indicate on the face or front of the article and any claim letter submitted for the article which page or portion of the article is determined to represent a trade secret; and
  - 3) Mark every page or portion of the article that is determined to represent a trade secret with the word "DETERMINED."

#### Section 130.306 Transmission of Article Between State Agencies

Before transmitting any article that is claimed or determined to represent a trade secret to another State agency, the State agency must ensure that the article is marked pursuant to Sections 130.302 and 130.304 of this Subpart and is clearly distinguished and segregated from other transmitted materials.

#### Section 130.308 Public Access to Information Related to Article

- a) A copy of the claim letter submitted pursuant to Section 130.200(b)(1) of this Part will be open to public inspection.
- b) When an article was determined to represent a trade secret before January 1, 2001 and no claim letter exists, the State agency must prepare a statement that will be open to public inspection, and that names and briefly describes the article.
- c) When a page or portion of an article is claimed or determined to represent a trade secret, a copy of the article must be open to public

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inspection, with the part or portion of the article that is claimed or determined to represent a trade secret or that would lead to disclosure of the trade secret deleted.

**Section 130.310 Access to Claimed or Determined Article**

- a) The State agency must designate the State agency employees or officers who are authorized to review articles that are claimed to represent trade secrets for the purpose of making a determination pursuant to Section 130.208 of this Part.
- b) Access to an article that is claimed or determined to represent a trade secret must be limited to:
  - 1) Employees or officers designated pursuant to subsection (a) of this Section;
  - 2) Other employees, officers, or authorized representatives of the State specifically authorized by the State agency to have access to the article for the purpose of carrying out the Act or regulations promulgated thereunder or when relevant to a proceeding or matter under the Act; or
  - 3) Employees, officers, or authorized representatives of the United States who are specifically authorized by the State agency to have access to the article for the purpose of carrying out federal environmental statutes or regulations.
- c) The State agency must maintain the following information with regard to an article that is claimed or determined to represent a trade secret:
  - 1) A record of the number of copies held by the State agency;
  - 2) A log of the location of all copies; and
  - 3) A log of all persons who are authorized to review the article or copies thereof.

**Section 130.312 Unauthorized Disclosure or Use of Article**

- a) The State agency must ensure that all persons who are authorized to have access to an article that is claimed or determined to represent a trade secret are given notice of the restrictions on disclosure and use of the article contained in this Subpart.
- b) No State agency officer, employee, or authorized representative may disclose, except as authorized by this Subpart, or use for private gain or advantage, any article that is claimed or determined to represent a trade secret.
- c) Each State agency officer, employee, or authorized representative must take reasonable measures to safeguard an article that is claimed or determined to represent a trade secret and to protect against disclosure that is inconsistent with these rules.
- d) Each authorized representative of the State agency who is furnished with access to an article that is claimed or determined to represent a trade secret pursuant to this Part must use or disclose that

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information only as authorized by the contract or agreement under which the person is authorized to represent the State agency.

**Section 130.314 Limitation on Copying Article**

No State agency officer, employee, or authorized representative of the State or the United States may copy an article that is claimed or determined to represent a trade secret pursuant to this Part except when authorized to do so by the State agency officer or employee designated to review the article pursuant to Section 130.312(a) of this Subpart. All copies must be recorded and logged in accordance with Section 130.312(c) of this Subpart.

**SUBPART D: NON-DISCLOSABLE INFORMATION OTHER THAN TRADE SECRETS****Section 130.400 General**

This Subpart applies only to filings of articles with the Board, and only with respect to Board determinations of whether articles are non-disclosable information other than trade secrets. "Non-disclosable information" is defined in 35 Ill. Adm. Code 101.Subpart B.

**Section 130.402 Who May View Non-Disclosable Information**

*Any information accorded confidential treatment may be disclosed or transmitted to other officers, employees, including Board Members, Board attorneys, environmental scientists of the Board's technical unit, Board hearing officers, the Clerk, Assistant Clerk, or authorized representatives of this State or of the United States concerned with or for the purposes of carrying out the Act or the federal environmental statutes and regulations; provided, however, that such information shall be identified as confidential by the Board, as the case may be [415 ILCS 5/7(e)].*

**Section 130.404 Application for Non-Disclosure**

- a) Except as provided in subsection (c)(4) of this Section, the applicant must file a single copy of the following:
  - 1) The article that is sought to be protected from disclosure; and
  - 2) The application for non-disclosure.
- b) When an entire article is sought to be protected from disclosure, the applicant must mark the article with the words "NON-DISCLOSABLE INFORMATION" in red ink on the face or front of the article.
- c) When less than an entire article is sought to be protected from disclosure, the applicant must:
  - 1) Mark the article with the words "NON-DISCLOSABLE INFORMATION" in red ink on the face or front of the article;
  - 2) Indicate on the face or front of the article which page or portion of the article is claimed to be non-disclosable information;

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- 3) Mark every page or portion of the article sought to be protected from disclosure with the words "NON-DISCLOSABLE INFORMATION;"
- 4) File with the Clerk a second copy of the article that is marked pursuant to subsections (c)(1) and (2) of this Section and from which the page or portion sought to be protected from disclosure is deleted.
- d) The applicant is not required to serve any other persons with the article or the page or portion thereof for which the applicant seeks protection from disclosure.
- e) The application for non-disclosure must contain the following:
  - 1) Identification of the particular non-disclosure category into which the material that is sought to be protected from disclosure falls (see 35 Ill. Adm. Code 101.202 for the definition of "non-disclosable information");
  - 2) A concise statement of the reasons for requesting non-disclosure;
  - 3) Data and information on the nature of the material that is sought to be protected from disclosure, identification of the number and title of all persons familiar with the data and information, and a statement of how long the material has been protected from disclosure;
  - 4) An affidavit verifying the facts set forth in the application for non-disclosure that are not of record in the proceeding; and
  - 5) A waiver of any decision deadline in accordance with Section 130.204 of this Part.

**Section 130.406 Public Inspection**

- a) The public cannot inspect material for which a non-disclosure application is pending before the Board.
- b) If the Board determines that the material is not entitled to be protected from disclosure, the public cannot inspect the material:
  - 1) Until the time for appeal of the Board's determination has expired; or
  - 2) If an appeal of the Board's determination is filed, until the Board receives official notification of a final order of a court with proper jurisdiction that does not reverse the Board's determination and that is not subject to further appeal.
- c) If the Board determines that the material is entitled to be protected from disclosure, the Board will protect from public inspection any page or portion of the material that the Board determined to be non-disclosable information until the Board receives official notification of a final order of a court with proper jurisdiction that reverses the Board's determination and that is not subject to further appeal.

**Section 130.408 Board Order**

- a) If the Board determines that the article or any page or portion

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- thereof is non-disclosable information, the Board will mark the word "DETERMINED" on the face or front and on every page or portion determined to be non-disclosable information.
- b) If the Board determines that the article, or any page or portion thereof is not non-disclosable information, the Board may enter a conditional non-disclosure order allowing the applicant to withdraw the material addressed in the order. If the applicant fails to withdraw the material by the deadline given in the Board order, the material will be returned to the Clerk's normal file and will be available for the public to inspect.

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Section 130. APPENDIX A Comparison of Former and Current Rules

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

FORMER PART 120 CURRENT SECTION

120.101	130.100
120.102	130.100
120.103	101.200
	101.202
	130.104
120.201	130.200
120.202	130.203
120.203	130.204
120.215	130.201
120.220	130.202
120.225	130.206
120.230	130.208
120.240	130.210
120.245	130.212
120.250	130.214
120.260	130.216
120.265	130.218
120.270	130.220
120.301	130.300
120.305	130.302
120.310	130.304
120.315	130.306
120.320	130.106
120.325	130.308
120.330	130.310
120.340	130.310
120.350	130.312
120.360	130.108
120.401	130.102

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1) Heading of the Part: Office of the State Fire Marshal Appeals

2) Code Citation: 35 Ill. Adm. Code 107

3) Section Numbers: Adopted Action:

107.100	Repealed
107.101	Repealed
107.102	Repealed
107.103	Repealed
107.120	Repealed
107.121	Repealed
107.122	Repealed
107.123	Repealed
107.124	Repealed
107.140	Repealed
107.141	Repealed
107.160	Repealed
107.180	Repealed
107.181	Repealed
107.200	Repealed
107.201	Repealed
107.202	Repealed
107.220	Repealed
107.221	Repealed
107.222	Repealed
107.223	Repealed
107.224	Repealed
107.225	Repealed
107.226	Repealed
107.227	Repealed
107.228	Repealed
107.240	Repealed
107.241	Repealed
107.242	Repealed
107.243	Repealed
107.244	Repealed
107.245	Repealed
107.246	Repealed
107.247	Repealed
107.260	Repealed
107.280	Repealed
107.300	Repealed
107.301	Repealed
107.302	Repealed
107.320	Repealed
107.340	Repealed
107.341	Repealed
107.342	Repealed

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- 107.360 Repealed  
107.361 Repealed  
107.362 Repealed
- 4) Statutory Authority: Implementing Section 57.9(c) of the Environmental Protection Act (Act) [415 ILCS 5/57.9(c)] and authorized by Section 26 of the Act [415 ILCS 5/26].
- 5) Effective Date of Repealer: January 1, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this repealer contain incorporations by reference? No
- 8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5442
- 10) Has JCAR issued a Statement of Objection to this repealer? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter?
- 13) Will this repealer replace emergency rules currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Repealer: In an effort to make the Board more accessible to the lay person, the Board proposes new user-friendly procedural rules that simplify, clarify, streamline and update the rules where necessary.
- 16) Information and questions regarding this adopted repealer shall be directed to:

Carol Sudman  
PCB  
600 S. Second St., Suite 402  
Springfield, Illinois 62701  
(217) 524-8509

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- 1) Heading of the Part: Permits
- 2) Code Citation: 35 Ill. Adm. Code 105
- 3) Section Numbers:  
105.101 Repealed  
105.102 Repealed  
105.103 Repealed  
105.104 Repealed  
Appendix A Repealed
- 4) Statutory Authority: Implementing Sections 5, 39, 39.5, 40, 40.1 and 40.2 of the Environmental Protection Act (Act) [415 ILCS 5/5, 39, 39.5, 40, 40.1 and 40.2] and authorized by Section 26 of the Act [415 ILCS 5/26].
- 5) Effective Date of Repealer: January 1, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this repealer contain incorporations by reference? No
- 8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5495
- 10) Has JCAR issued a Statement of Objection to this repealer? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will this repealer replace emergency rules currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Repealer: In an effort to make the Board more accessible to the lay person, the Board proposes new user-friendly procedural rules that simplify, clarify, streamline and update the rules where necessary.
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 NOTICE OF ADOPTED REPEALER  
 Springfield, Illinois 62701

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- 1) Heading of the Part: Petition to Review Pollution Control Facility Siting Decisions
- 2) Code Citation: 35 Ill. Adm. Code 107
- 3) Section Numbers:
- |         |                        |
|---------|------------------------|
| 107.100 | <u>Adopted Action:</u> |
| 107.102 | New Section            |
| 107.104 | New Section            |
| 107.106 | New Section            |
| 107.200 | New Section            |
| 107.202 | New Section            |
| 107.204 | New Section            |
| 107.206 | New Section            |
| 107.208 | New Section            |
| 107.300 | New Section            |
| 107.302 | New Section            |
| 107.304 | New Section            |
| 107.306 | New Section            |
| 107.308 | New Section            |
| 107.400 | New Section            |
| 107.402 | New Section            |
| 107.404 | New Section            |
| 107.500 | New Section            |
| 107.502 | New Section            |
| 107.504 | New Section            |
| 107.506 | New Section            |
- APPENDIX A
- 4) Statutory Authority: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 39.2, and 40.1 of the Act [415 ILCS 5/39.2 and 40.1].
- 5) Effective Date of Rules: January 1, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these rules contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Board's Chicago office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5463
- 10) Has JCAR issued a Statement of Objection to these rules? No

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

11) Differences between proposal and final version: In addition to technical changes and clarifications to this Part, the Board deletes Section 107.506(b) and (c). In these subsections, the Board attempted to codify when it may reverse or remand local government decisions on siting new pollution control facilities. At this time, the Board does not find it appropriate to so limit the forms that Board decisions may take. The Board acknowledges, however, that provisions like these may be useful to the public. The Board does not rule out revisiting this subject in the future.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes

13) Will these rules replace emergency rules currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: For the first time, the Board will have procedural rules that specifically address appeals of local government decisions on siting new pollution control facilities. The rendering and review of local siting decisions are provided for in Sections 39.2 and 40.1 of the Act (415 ILCS 5/39.2 and 40.1 (1998)).

Subpart B of Part 107 addresses petitions for the Board to review local siting decisions, including who may file a petition. Siting applicants may petition for review of siting denial or a condition of siting approval. Any person who participated in the local public hearing and who is so located as to be affected by the proposed facility may petition for review of siting approval.

In Subpart C, the Board instructs the county or municipal clerk how to file the local siting decision record. The Board previously had to set forth these instructions in a Board order accepting the petition for hearing. Subpart D addresses the hearing before the Board, including how the public can participate. Subpart E contains provisions on the Board's review, including the decision deadline.

A more detailed discussion of these proposed rules is contained in the Board's opinion and order in R00-20, which the Board adopted on December 21, 2000. The opinion and order are available from the Board's Chicago office and on the Board's Web site.

16) Information and questions regarding these adopted rules shall be directed to:

Carol Sudman  
Pollution Control Board  
600 S. Second St., Ste. 402

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

Springfield, Illinois 62701  
(217) 524-8509

The opinion and order for this rule (R00-20) are available on the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). For copies please contact:

Dorothy Gunn, Clerk  
Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago IL 60601  
(312) 814-3620

The full text of the adopted rules begins on the next page:

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

- 3) All briefs and other arguments and statements of parties and participants;
- 4) All exhibits relied upon by the local siting authority in making its decision;
- 5) All written public comments relevant to the local government proceeding;
- 6) Minutes of all relevant open meetings of the siting authority;
- 7) Notices of hearings or all relevant meetings of the siting authority;
- 8) The written decision of the siting authority made pursuant to Section 39.2 of the Act;
- 9) Certificate of Record as described in Section 107.308 of this Part; and
- 10) *If, prior to making a final local siting decision, a county board or governing body of a municipality has negotiated and entered into a host agreement with the local siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the county board or governing body of the municipality and the siting applicant and shall describe the terms and conditions of the oral agreement. [415 ILCS 5/39.2(e)]*
- b) The record must contain the originals or legible copies of all documents, must be arranged in chronological sequence, and must be sequentially numbered, placing the letter "C" before the number of each page.
- c) Seven copies of the transcript and one original and 9 copies of all other documents in the record must be filed with the Board.

#### Section 107.306 Preparing of the Record

Unless petitioner is a citizen or citizen's group, the petitioner must pay the costs of preparing and certifying the record to the Board. If the petitioner is a citizen or citizen's group, *such petitioner shall be exempt from paying the costs of preparing and certifying the record [415 ILCS 5/39.2(n)].*

#### Section 107.308 Certification of Record

The record filed with the Board must be certified by the county clerk, if the siting authority is a county, or the municipal clerk, if the siting authority is a municipality. The certification must be entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the documents comprising the record and show the page number upon which they start and end. The Certificate of Record must be served on all parties.

SUBPART D: HEARING

POLLUTION CONTROL BOARD  
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#### Section 107.400 General

Hearings and discovery will be conducted in accordance with the provisions set forth in the Board's general procedural rules found at 35 Ill. Adm. Code 101.Subpart F.

#### Section 107.402 Authority and Duties of Hearing Officer

The authority and duties of the hearing officer are set forth in the Board's general procedural rules found at 35 Ill. Adm. Code 101.Subpart F.

#### Section 107.404 Public Participation

Parties to the proceeding will have all rights of examination and cross-examination relevant in any judicial proceeding. Persons who are not parties as set forth in Section 107.202 of this Part are considered participants and will have hearing participation rights as determined by the hearing officer in accordance with 35 Ill. Adm. Code 101.628. Participants may offer comment at a specifically determined time in the proceeding, but may not examine or cross-examine witnesses for either party. In accordance with this Section and 35 Ill. Adm. Code 101.628, public comment will not be considered testimony unless sworn and subject to cross-examination.

#### SUBPART E: BOARD REVIEW AND DECISION

#### Section 107.500 Preliminary Board Determination/Set for Hearing

Upon proper filing of the petition, the Board will set the matter for hearing unless it determines that the matter is frivolous or duplicitious as required by Section 40.1(b) of the Act.

#### Section 107.502 Dismissal of Petition

- a) The Board on its own motion or motion by any party, may dismiss any petition that:
  - 1) is untimely filed pursuant to Section 107.204 of this Part;
  - 2) fails to name all parties as required by Section 39.2 of the Act;
  - 3) fails to include the required fee and all information as required by Section 107.208 of this Part; or
  - 4) fails to meet the requirements in 35 Ill. Adm. Code 101.Subpart C.
- b) Upon motion by any unit of local government that is required to prepare and certify its record alleging that any petitioner required to pay costs of preparing and certifying the record of the proceedings has failed to pay those costs, the Board may enter a dismissal or other order as allowed by Section 39.2(n) of the Act.

#### Section 107.504 Decision Deadline

## POLLUTION CONTROL BOARD

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with the requirements of Section 39.2(d) and with general standards of fundamental fairness. Pursuant to Section 40.1 of the Act, a decision of a unit of local government to site or deny siting of a new pollution control facility is reviewable by the Board. The decision of the Board is appealable to the Illinois appellate court.

## SUBPART B: PETITION FOR REVIEW

**Section 107.200 Who May File Petition**

The following persons may file a petition for review of a decision concerning siting of a new pollution control facility pursuant to Section 40.1 of the Act:

- a) Siting applicants. Any person who has properly applied to one or more units of local government, pursuant to Section 39.2 of the Act, for siting approval of a new pollution control facility and has been denied siting approval under Section 39.2 of the Act, may file a petition for review of the decision to deny siting. The siting applicant may also appeal conditions imposed in a decision granting siting approval.
- b) Other persons. Any person who has participated in the public hearing conducted by the unit of local government and is so located as to be affected by the proposed facility may file a petition for review of the decision to grant siting. Associations that file a petition before the Board must be represented by an attorney in accordance with 35 Ill. Adm. Code 101.400.

**Section 107.202 Parties**

- a) In a petition to review a local government's decision concerning a new pollution control facility, the following are parties to the proceeding:
  - 1) The petitioner or petitioners are the persons described in Section 107.200 of this Part. If there is more than one petitioner, they must be referred to as co-petitioners; and
  - 2) The unit(s) of local government whose decision is being reviewed must be named the respondent(s). In an appeal pursuant to Section 107.200(b), the siting applicant must also be named as a respondent.
- b) Where the interests of the public would be served, the Board or hearing officer may allow intervention by the Attorney General or the State's Attorney of the county in which the facility will be located.

**Section 107.204 Time for Filing Petition**

A petition for review must be filed within 35 days after the local siting authority's action to approve or disapprove siting. Action means the local government's official written decision granting or denying local siting approval. Pursuant to Section 39.2(e) of the Act, action includes failure of

## POLLUTION CONTROL BOARD

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the governing body to act within 180 days after receiving a request for siting approval.

**Section 107.206 Filing and Service Requirements**

- a) Filing. The petition for review must be filed with the Clerk of the Board in accordance with the filing requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C and Section 107.208 of this Part.
- b) Service. The petition for review must be served upon all parties in accordance with the Board's service requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C.

**Section 107.208 Petition Content Requirements**

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must also include:

- a) A copy of the local siting authority's written decision or ordinance;
- b) A statement as to how the filing party is a proper petitioner under Section 107.200 of this Part; and
- c) In accordance with Section 39.2 of the Act, a specification of the grounds for the appeal, including any allegations for fundamental unfairness or any manner in which the decision as to particular criteria is against the manifest weight of the evidence.

## SUBPART C: FILING OF LOCAL RECORD

**Section 107.300 Record**

Pursuant to Sections 39.2 and 40.1 of the Act, the siting authority must compile a complete record of its proceedings.

**Section 107.302 Filing of the Record**

The siting authority must file the record of its proceedings with the Board as directed by Board or hearing officer order. Failure to file the entire record on the date directed by the Board or hearing officer may subject the respondent to sanctions as may be ordered by the Board in accordance with 35 Ill. Adm. Code 101.Subpart H.

**Section 107.304 Record Contents**

- a) The record must contain all information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process including:
  - 1) The siting application;
  - 2) Any and all transcripts of local hearings;

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## NOTICE OF ADOPTED RULES

1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions

2) Code Citation: 35 Ill. Adm. Code 106

3) Section Numbers: Adopted Action:

106.100 New Section  
 106.102 New Section  
 106.104 New Section  
 106.200 New Section  
 106.202 New Section  
 106.204 New Section  
 106.206 New Section  
 106.208 New Section  
 106.210 New Section  
 106.300 New Section  
 106.302 New Section  
 106.304 New Section  
 106.306 New Section  
 106.308 New Section  
 106.310 New Section  
 106.400 New Section  
 106.402 New Section  
 106.404 New Section  
 106.406 New Section  
 106.408 New Section  
 106.410 New Section  
 106.412 New Section  
 106.414 New Section  
 106.416 New Section  
 106.500 New Section  
 106.502 New Section  
 106.504 New Section  
 106.506 New Section  
 106.508 New Section  
 106.510 New Section  
 106.512 New Section  
 106.514 New Section  
 106.600 New Section  
 106.602 New Section  
 106.604 New Section  
 106.606 New Section  
 106.608 New Section  
 106.610 New Section  
 106.700 New Section  
 106.702 New Section  
 106.704 New Section  
 106.706 New Section

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106.707 New Section  
 106.708 New Section  
 106.710 New Section  
 106.712 New Section  
 106.714 New Section  
 106.716 New Section  
 106.718 New Section  
 106.720 New Section  
 106.722 New Section  
 106.724 New Section  
 106.726 New Section  
 106.728 New Section  
 106.730 New Section  
 106.732 New Section  
 106.734 New Section  
 106.736 New Section  
 106.738 New Section  
 106.740 New Section  
 APPENDIX A  
 New Section

4) Statutory Authority: Implementing and authorized by Sections 5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act). [415 ILCS 5/5]

5) Effective Date of Rules: January 1, 2001

6) Does this rulemaking contain an automatic repeal date? No

7) Do these rules contain incorporations by reference? No

8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Board's Chicago office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5377

10) Has JCAR issued a Statement of Objection to these rules? No

11) Differences between proposal and final version: The Board made technical changes and clarifications to this Part, but no significant substantive changes were made.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes

13) Will these rules replace emergency rules currently in effect? No



## POLLUTION CONTROL BOARD

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14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: Part 106 addresses proceedings pursuant to specific rules or statutory provisions. Part 106 contains the following: heated effluent, artificial cooling lake, and sulfur dioxide demonstrations (Subpart B); water well setback exception procedures (Subpart C); revocation of Clean Air Act Permit Program (CAAPP) permits (Subpart D); maximum achievable control technology determinations (Subpart E); culpability determinations for particulate matter less than or equal to 10 microns (PM-10) (Subpart F); and involuntary termination of EMSAs (Subpart G).

A more detailed discussion of these proposed rules is contained in the Board's opinion and order in R00-20, which the Board adopted on December 21, 2000. The opinion and order are available from the Board's Chicago office and on the Board's Web site.

16) Information and questions regarding these adopted rules shall be directed to:

Carol Sudman  
Pollution Control Board  
600 S. Second St., Ste. 402  
Springfield, Illinois 62701  
(217) 524-8509

The opinion and order for this rule (R00-20) are available on the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). For copies please contact:

Dorothy Gunn, Clerk  
Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago IL 60601  
(312) 814-3620

The full text of the adopted rules begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

## PART 106

PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

SUBPART A: GENERAL PROVISIONS

Section	Applicability
106.100	
106.102	Severability
106.104	Definitions

SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE, AND SULFUR DIOXIDE DEMONSTRATIONS

Section	General
106.200	
106.202	Petition Requirements
106.204	Additional Petition Requirements in Sulfur Dioxide Demonstration Notice
106.206	
106.208	Recommendation and Response
106.210	Burden of Proof

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

Section	General
106.300	
106.302	Initiation of Proceeding
106.304	Petition Content Requirements
106.306	Response and Reply
106.308	Hearing
106.310	Burden of Proof

SUBPART D: REVOCATION AND REOPENING OF CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS

Section	General
106.400	
106.402	Definitions
106.404	Initiation of Proceedings
106.406	Petition Content Requirements
106.408	Response and Reply
106.410	Hearing
106.412	Burden of Proof
106.414	Opinion and Order
106.416	USEPA Review of Proposed Determination

## POLLUTION CONTROL BOARD

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## SUBPART E: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY DETERMINATIONS

## Section

106.500 General  
 106.502 Definitions  
 106.504 Initiation of Proceedings  
 106.506 Petition Content Requirements  
 106.508 Response and Reply  
 106.510 Hearing  
 106.512 Burden of Proof  
 106.514 Board Action

SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER  
LESS THAN OR EQUAL TO 10 MICRONS (PM-10)

## Section

106.600 General  
 106.602 Initiation of Proceedings  
 106.604 Petition Content Requirements  
 106.606 Response and Reply  
 106.608 Hearing  
 106.610 Burden of Proof

SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL  
MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

## Section

106.700 Purpose  
 106.702 Applicability  
 106.704 Termination Under Section 52.3-4(b) of the Act  
 106.706 Who May Initiate, Parties  
 106.707 Notice, Statement of Deficiency, Answer  
 106.708 Service  
 106.710 Notice of Hearing  
 106.712 Deficient Performance  
 106.714 Board Decision  
 106.716 Burden of Proof  
 106.718 Motions, Responses  
 106.720 Intervention  
 106.722 Continuances  
 106.724 Discovery, Admissions  
 106.726 Subpoenas  
 106.728 Settlement Procedure  
 106.730 Authority of Hearing Officer, Board Members, and Board Assistants  
 106.732 Order and Conduct of Hearing  
 106.734 Evidentiary Matters  
 106.736 Post-Hearing Procedures  
 106.738 Motion After Entry of Final Order

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106.740 Relief from Final Orders  
APPENDIX A Comparison of Former and Current Rules

AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5, 14.2, 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3].

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1978; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg.

550 - 5.6 effective JAN 01 2001

## SUBPART A: GENERAL PROVISIONS

## Section 106.100 Applicability

- a) This Part applies to adjudicatory proceedings pursuant to specific rules or statutory provisions. Specifically, the Part applies to heated effluent, artificial cooling lake and sulfur dioxide demonstrations, water well setback exception procedures, revocation and reopening of CAAPP permits, maximum achievable control technology determinations, culpability determinations for particulate matter less than or equal to 10 microns, and the involuntary termination of environmental management system agreements.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101 which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

## Section 106.102 Severability

If any provision of this Part or its application to any person is adjudged invalid the adjudication does not affect the validity of this Part as a whole or of any petition not adjudged invalid.

## Section 106.104 Definitions

For the purpose of this Part, words and terms will have the meaning as defined in 35 Ill. Adm. Code 101. Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE, AND SULFUR DIOXIDE

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## DEMONSTRATIONS

## Section 106.200 General

## a) Description

## 1) Heated Effluent Demonstration

- A) The owner or operator of a source of heated effluent that discharges 150 megawatts (0.5 billion British thermal units per hour) or more must demonstrate in an adjudicatory proceeding before the Board, pursuant to 35 Ill. Adm. Code 302.211(f), that discharges from that source have not caused and cannot be reasonably expected to cause significant ecological damage to the receiving waters.
- B) The owner or operator must make the demonstration under subsection (a)(1)(A) of this Section not less than 5 years nor more than 6 years after operations commence.

- C) If the Board finds that the proof of the owner or operator under subsection (a)(1)(A) of this Section is inadequate, the Board's order will include a requirement that the owner or operator perform appropriate corrective measures within a reasonable time as determined by the Board.

## 2) Artificial Cooling Lake Demonstration

- A) If a discharger wishes to have the Board establish specific thermal standards for its discharge to an artificial cooling lake pursuant to 35 Ill. Adm. Code 302.211(j)(5) that would apply to the discharge in lieu of the applicable provisions of the thermal water quality standards set forth in 35 Ill. Adm. Code 302.211 and 303, the discharger must demonstrate in an adjudicatory proceeding before the Board, pursuant to 35 Ill. Adm. Code 302.211(j)(3), that the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act.

- B) If the Board finds that the proof of the discharger under subsection (a)(2)(A) of this Section is adequate, the Board will establish, pursuant to 35 Ill. Adm. Code 302.211(j)(5), specific thermal standards to be applied to the discharge to the artificial cooling lake in lieu of the applicable provisions of the thermal water quality standards set forth in 35 Ill. Adm. Code 302.211 and 303.

- C) A Board order providing alternate thermal standards under subsection (a)(2)(B) of this Section will include, but not be limited to, the following conditions:

- i) Pursuant to 35 Ill. Adm. Code 302.211(j)(1), all discharges from the artificial cooling lake to other waters of the State must comply with the applicable provisions of 35 Ill. Adm. Code 302.211(b) through (e); and
- ii) Pursuant to 35 Ill. Adm. Code 302.211(j)(2), the

## POLLUTION CONTROL BOARD

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heated effluent discharged to the artificial cooling lake must comply with all applicable provisions of 35 Ill. Adm. Code Subtitle C, Chapter I, except 35 Ill. Adm. Code 302.211(b) through (e).

- 3) Sulfur Dioxide Demonstrations. Any owner or operator of a fuel combustion emission source may petition the Board, pursuant to 35 Ill. Adm. Code 214.185 and this Subpart, for approval of substitute standards from those set forth in 35 Ill. Adm. Code 214.183 and 214.184.

- b) Initiation of Proceeding. The owner or operator may initiate a heated effluent, artificial cooling lake or sulfur dioxide demonstration by filing with the Clerk a petition in accordance with this Subpart.

- c) Parties. The owner or operator must be named the petitioner and the Agency must be named the respondent.

- d) Filing and Service. Filing and service must be in accordance with 35 Ill. Adm. Code 101.Subpart C.

## Section 106.202 Petition Requirements

- a) Heated Effluent Demonstration. The petition must include, where applicable, the following information but may include additional information that the petitioner believes will be relevant to the proceeding:

## 1) General Plant Description:

- A) Generating capacity;
- B) Type of fuel used;
- C) Operating characteristics of the condenser cooling system;
- D) History of the load factor of the plant for the time during which the plant has operated, but for no more than the last 5 years;

- E) Projected load factors for the life of the plant;
- F) Estimated date of retirement for each unit at the plant and any plans for additional units at the plant;

- G) History of plant shutdowns; and

- H) Planned, emergency, and projected shutdowns with frequency and duration.

## 2) Description of Method for Heat Dissipation:

- A) Type of system used (such as once-through, mechanical, and draft cooling towers) in narrative form; and
- B) Summary information on temperature of discharge to receiving waters in narrative form.

## 3) Plume Studies:

- A) Actual plume studies in the last 5 years correlated with plant operation and meteorological conditions;
- B) Theoretical plume studies for all four seasons for typical and worst case conditions. Worst case conditions must be identified as worst conditions of plant load factors, precipitation, ambient water temperature, and air

## POLLUTION CONTROL BOARD

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temperature; the studies must consider the frequency of occurrence and their joint probabilities of occurrence; and

C) Theoretical plume studies that identify isotherms at 3° Fahrenheit (1.7° Centigrade) intervals down to ambient temperature indicating three-dimensional effects.

4) A demonstration that discharges from the source of heated effluent have not caused and cannot be reasonably expected to cause significant ecological damage to the receiving waters, including:

A) Biological studies in the last 5 years on receiving waters, including species studied, location of studies, and conclusions reached, including conclusions as to both the lethal and sublethal effects of the thermal discharge;

B) The impact on other animal life (such as waterfowl and amphibians) in the area as a result of the thermal discharge; and

C) Secondary Considerations

i) Possible and known impact on recreation from thermal discharges; and

ii) Management practices employed or planned in order to limit the effect of any environmental harm established under this subsection (a)(4).

The demonstration required under this subsection (a)(4) may take any of the forms described in subsection (b)(2) of this Section.

5) A citation to any prior proceedings, in which the petitioner was a party, brought pursuant to 35 Ill. Adm. Code 302.211(f) or (j)(3).

b) Artificial Cooling Lake Demonstration. The petition must include, where applicable, the following information but may include additional information that the petitioner believes will be relevant to the proceeding:

1) A demonstration that the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act, including:

A) Provision of conditions capable of supporting shellfish, fish and wildlife, and recreational uses consistent with good management practices; and

B) Control of the thermal component of the discharger's effluent by a technologically feasible and economically reasonable method.

2) The demonstration required under subsection (b)(1) of this Section may take the form of any of the following:

A) A final environmental impact statement;

B) Pertinent provisions of environmental assessments used to prepare the final environmental impact statement; or

C) A showing pursuant to Section 316(a) of the Clean Water Act (33 USC 1326).

3) A citation to any prior proceedings, in which the petitioner was

## POLLUTION CONTROL BOARD

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a party, brought pursuant to 35 Ill. Adm. Code 302.211(f) or (j)(3).

c) Sulfur Dioxide Demonstration. The petition must include the following information:

1) An explicit statement of the site-specific emission limitation (in pounds of sulfur dioxide per million British thermal units (btu) actual heat input and total pounds of sulfur dioxide per hour) that is proposed for the facility.

2) Emission Sources Description:

A) The diameter, height, exit gas temperature, and exit gas velocity for all stacks or vents through which sulfur dioxide is emitted into the atmosphere;

B) A description of the fuels used including type, ultimate analysis, sulfur content, and heat content;

C) A description of the type of fuel combustion equipment including method of firing and size (in million btu per hour capacity);

D) A topographic map of terrain within 30 miles of the emission source(s);

E) A specific description of the location of the emission sources, including a plot plan; and

F) A specific description of the operating conditions which produce maximum sulfur dioxide emissions.

3) A summary of any and all ambient air quality data collected by the owner or operator of the source(s) since January 1, 1973. The summary must include annual averages; maximum and second-highest one-hour, 3-hour, and 24-hour averages for each month; and the number of times the 3-hour and 24-hour sulfur dioxide standards were exceeded during each month.

4) A summary of any and all meteorological data collected by the owner or operator of the source(s) since January 1, 1973, if the data are used in the development of the site-specific emission standard.

5) A complete description of and justification for all dispersion models and plume rise equations that are used to develop the site-specific emission limitation, including all model equations.

6) A description of and justification for the use of all data that were inputs to the dispersion and plume rise formula used to establish the site-specific emission standard. The description and justification must cover, as a minimum, the following input data:

A) Stack diameters, stack heights, exit gas temperatures, and exit gas velocities for all stacks and vents emitting sulfur dioxide at the subject facility as well as for any other sources of sulfur dioxide that were modeled;

B) All sulfur dioxide emission sources that were modeled; and

C) All meteorological data.

7) Calculated maximum ground-level concentrations using the

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following method, or such other method (or modification of the hereinafter stated method) that the petitioner proves to the satisfaction of the Board to be acceptable.

- A) Selection of simulation model:
  - i) Gaussian models that allow the input of hourly meteorological data must be used which are appropriate for the specific location and type of source(s) in question.
  - ii) Dispersion models presented in "Guidelines on Air Quality Models" (EPA-450/2-78-027), or those deemed by the Board to be equivalent to these models must be used for detailed air quality studies.
- B) Selection of meteorological data and stack parameters:
  - i) The most recent 5 years of hour-by-hour meteorological data reasonably available, including wind speed, wind direction, atmospheric stability, mixing height and surface temperature must be used, unless the petitioner demonstrates that one of the 5 years causes substantially higher concentrations than the other four, in which case detailed analyses conducted for only that "worst case" year would be acceptable. Notwithstanding the previous sentence, one year of on-site data may be used in lieu of the 5-year data requirement;
  - ii) Data must be from the nearest, representative, quality controlled meteorological collecting site; and
  - iii) Stack parameters (including emission rate, stack height, stack diameter, exit velocity, and exit temperature) must reflect the maximum operating rate for comparison with the 24-hour and 3-hour sulfur dioxide standards.
- C) Receptors:
  - i) Receptors must be located so as to ensure that the source's maximum impact is detected; and
  - ii) The determination of the receptor grid must be fully documented in the modeling study;
- D) Special conditions:
  - i) All special conditions that may affect the dispersion of the effluent plume, including local terrain effects and aerodynamic downwash, must be considered in the modeling study;
  - ii) If terrain is a factor in the vicinity of the source, a model capable of handling variable-height receptors must be used; and
  - iii) If the computed height of the effluent plume is less than 2.5 times the height of nearby buildings or local obstructions, aerodynamic downwash must be studied and considered as a possible factor in the dispersion of

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that effluent.

- E) Determination of violation: The determination of whether an applicable air quality increment or standard is being violated must be based on the second-highest predicted concentration over the receptor grid for short-term averaging times and on the highest predicted concentration for annual averaging times. However, if only one year of meteorological data is used in the short-term analysis, then the highest predicted concentration may be compared to the applicable standard to determine whether a violation has occurred.
- F) Other sources: Effects of other sources of sulfur dioxide must be taken into account in the modeling study. Methods by which other sources of sulfur dioxide may be accounted are as follows:
  - i) An acceptable method is to estimate the "background" from monitoring data which has been subjected to adequate quality control where available. When monitored data is used, the background must be estimated using monitoring days with meteorological conditions similar to those identified as "worst case" for the source in question; or
  - ii) If monitoring data is not available, then all sources of sulfur dioxide having a significant impact in the area of the source's impact area must be used in the simulation model. These sources of sulfur dioxide must also be modeled at their maximum allowable emission rate for any studies addressing 24-hour or 3-hour averaging times.
- 8) Estimates of the frequency, characteristics, probable time of occurrence, and duration of the meteorological conditions associated with the maximum ground-level concentration of sulfur dioxide to which the facility under study contributes. A description of the techniques used in arriving at the above estimates must be included.
- 9) Background concentrations that were determined for all meteorological conditions required to be examined under subsection (c)(7) of this Section and for any other meteorological conditions considered in the development of the alternative standard.
- 10) A description of the method that was used to determine background sulfur dioxide concentrations in the vicinity of the subject facility for each of the meteorological conditions required to be examined under subsection (c)(7) of this Section and for any additional meteorological conditions considered in developing the alternative standard.
- 11) An evaluation and calibration of the dispersion model if air quality monitoring data were available to perform the evaluation



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and calibration.

#### Section 106.204 Additional Petition Requirements in Sulfur Dioxide Demonstrations

In addition to meeting the petition contents requirements of Section 106.202(c) of this Part the petitioner must ensure that the procedural requirements of 40 CFR 51.4 (1977) are met and, at least 30 days prior to the date of the hearing, petitioner must:

- a) Give notice to the public by prominent advertisement in the Air Quality Control Region affected announcing the date, time and place of the hearing;
- b) Make available a copy of the petition for public inspection in at least one location in the Air Quality Control Region in which the source is located;
- c) Notify the Administrator of USEPA (through the Region V Office);
- d) Notify each local air pollution control agency located within the affected Air Quality Control Region; and
- e) Notify, in the case of an interstate Air Quality Control Region, any air pollution control agencies of other states included, in whole or in part, in the Region.

#### Section 106.206 Notice

The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceedings must be in accordance with 35 Ill. Adm. Code 101.Subpart F.

#### Section 106.208 Recommendation and Response

The Agency must file a recommendation on a petition under this Subpart as prescribed in this Section. The petitioner or any other party to the proceeding may file a response to the Agency recommendation within 14 days after service of the petition. Any person other than a party to the proceeding may file a response to the Agency recommendation within 14 days after the Agency files the recommendation.

- a) Heated Effluent Demonstration
  - Within 60 days after the owner or operator files the petition, the Agency must make a recommendation to the Board on the petition. The recommendation may include:
    - 1) A description of the Agency's efforts in conducting its review of the petition;
    - 2) The Agency's conclusion as to whether discharges from the source have caused or can reasonably be expected to cause significant ecological damage to the receiving waters;
    - 3) The factual basis for the Agency's conclusion;
    - 4) Any corrective measures that the Agency recommends be taken and the recommended time period to implement the measures; and

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- 5) The Agency's recommendation on how the Board should dispose of the petition.

- b) Artificial Cooling Lake Demonstration
  - Within 60 days after the owner or operator files the petition, the Agency must make a recommendation to the Board on the petition. The recommendation may include:
    - 1) A description of the Agency's efforts in conducting its review of the petition;
    - 2) The Agency's conclusion as to whether the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act;
    - 3) The factual basis for the Agency's conclusion; and
    - 4) The Agency's recommendation on how the Board should dispose of the petition.

#### c) Sulfur Dioxide Demonstration

Within 90 days after the filing of the petition the Agency must make a recommendation to the Board as to be proposed site-specific emission limitation. The recommendation may include, the following:

- 1) A description of the efforts made by the Agency in conducting its review;
- 2) The Agency's conclusion as to whether the proposed site-specific emission limitation is adequate to prevent violations of the Primary and Secondary Sulfur Dioxide Ambient Air Quality Standards; and
- 3) The Agency's conclusion as to what disposition should be made of the petition.

#### Section 106.210 Burden of Proof

The burden of proof will be on the petitioner.

#### SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

#### Section 106.300 General

- a) Description. This Subpart applies to any owner of a new potential route, a new potential primary source other than landfilling or land treating, or new potential secondary source who files a petition for an exception from the setback requirements of Sections 14.2 and 14.3(e) of the Act pursuant to Section 14.2(c) of the Act and this Subpart. [415 ILCS 5/14.2(c)]
- b) Parties. The owner filing the petition for an exception must be named the petitioner and the Agency must be named the respondent. Affected well owners who are not petitioners also must be named respondents.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

#### Section 106.302 Initiation of Proceeding

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- a) The petitioner must file the petition for exception with the Clerk of the Board and must serve one copy upon the Agency.
- b) The petitioner must notify and provide a copy of the petition to the owners of each potable water supply for which the setback requirements would be affected by the exception.

**Section 106.304 Petition Content Requirements**

The petition must contain the following information:

- a) A written statement, signed by the petitioner or an authorized representative, outlining the scope of the evaluation, the nature of, the reasons for, and the basis of the exception, consistent with the burden of proof contained in Section 106.310 of this Part;
- b) The nature of the petitioner's operations and control equipment;
- c) Proof of service on owners required to be notified and provided with a copy of the petition as required by Section 106.302(b) of this Part, 35 Ill. Adm. Code 101, and Section 14.2(c) of the Act; and
- d) Any other information which may be required by Section 14.2 of the Act.

**Section 106.306 Response and Reply**

- a) Within 21 days after the filing of a petition, the Agency and any owner required to be notified may file a response to any petition in which it has not joined as co-petitioner. The response must include the comments concerning potential Board action on the petition.
- b) The petitioner may file a reply within 14 days after the service of any response.

**Section 106.308 Hearing**

The Board will hold at least one public hearing in an exception proceeding. The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F.

**Section 106.310 Burden of Proof**

The burden of proof is on the petitioner. The petitioner must demonstrate that:

- a) Compliance with the setback requirements of Section 14.2 or 14.3(e) of the Act would pose an arbitrary and unreasonable hardship;
- b) The petitioner will utilize the best available control technology economically achievable to minimize the likelihood of contamination of the potable water supply well;
- c) The maximum feasible alternative setback will be utilized; and
- d) The location of the potential route will not constitute a significant hazard to the potable water supply well.

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SUBPART D: REVOCATION AND REOPENING OF  
CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS

**Section 106.400 General**

- a) Description. The provisions of this Subpart will apply to:
  - 1) Any revocation proceeding initiated by the Agency when it determines that there are grounds to revoke and reissue a Clean Air Act Permit Program (CAAPP) permit for cause, pursuant to Section 39.5(15)(b) of the Act; and
  - 2) Any reopening proceeding initiated by the Agency pursuant to a notice that there are grounds to terminate or revoke and reissue a CAAPP permit for cause, pursuant to Section 39.5(16) of the Act.
- b) Parties
  - 1) In a revocation proceeding initiated by the Agency, the Agency will be named as petitioner and the holder of the CAAPP will be named as respondent.
  - 2) In a reopening proceeding initiated by the Agency, the Agency will be named as petitioner and the holder of the CAAPP will be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

**Section 106.402 Definitions**

The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise. If there is a conflict, the definitions of Section 39.5 of the Act will apply.

**Section 106.404 Initiation of Proceedings**

- a) Agency Revocation Proceeding. The Agency may initiate a revocation proceeding before the Board by serving a petition for revocation upon the respondent and filing the petition with the Board.
- b) USEPA Reopening Proceeding. If the Agency receives from USEPA a notice to terminate or revoke and reissue a CAAPP permit for cause, the Agency must, within 30 days after receipt of USEPA's notice, serve a petition upon the respondent and file the petition with the Board.

**Section 106.406 Petition Content Requirements**

- a) Agency Revocation Proceeding. The petition in a revocation proceeding must include:
  - 1) The grounds for the revocation of the CAAPP permit;
  - 2) The associated permit record; and
  - 3) Any other information necessary to establish that the CAAPP

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permit should be revoked.

- b) USEPA Reopening Proceeding. The petition in a reopening proceeding must include:
  - 1) USEPA notice to terminate or revoke and reissue a CAAPP permit that initiated the matter for cause;
  - 2) The associated permit record; and
  - 3) The Agency's proposed determination and the justification for the proposed determination.

## Section 106.408 Response and Reply

- a) The respondent may file a response to the Agency's petition within 21 days after service of the petition.
- b) The Agency may file a reply within 21 days after filing of any response.

## Section 106.410 Hearing

The Board will hold at least one public hearing in the county where the CAAPP source is located. The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding must be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

## Section 106.412 Burden of Proof

- a) Agency revocation proceeding. The burden of proof will be on the Agency to establish that the permit should be revoked under the standards set forth in this Act and the Clean Air Act.
- b) USEPA reopening proceeding. The burden of proof will be on the Agency.

## Section 106.414 Opinion and Order

- a) Agency Revocation Proceeding:
  - 1) The Board will issue a written opinion and order within 120 days after the filing of the petition that sets forth the Board's decision and supporting rationale.
  - 2) If the Board determines that the permit should be revoked and reissued, its final order will direct the Agency to revoke and reissue the CAAPP permit consistent with Section 39.5 of the Act.
- b) USEPA Reopening Proceeding:
  - 1) After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at hearing, the Board shall issue and enter an interim order for the proposed determination within 120 days after the filing of the petition, which shall set forth all changes, if any, required in the Agency's proposed determination. The interim order shall comply with requirements for final order as set forth in Section 33 of

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the Act. Issuance of an interim order by the Board under this subsection (b), however, shall not affect the permit status and does not constitute a final action for purposes of the Act or the Administrative Review Law. [415 ILCS 5/39.5(16)(b)(ii)]

- 2) The Board shall cause a copy of its interim order to be served upon all parties to the proceeding as well as upon USEPA. The Agency shall submit the proposed determination to USEPA in accordance with the Board's interim order within 180 days after receipt of the notification from USEPA. [415 ILCS 5/39.5(16)(b)(iii)]

## Section 106.416 USEPA Review of Proposed Determination

- a) If USEPA does not object to the proposed determination within 90 days after receipt, the Board will, within 7 days after receipt of USEPA's final approval or within 21 days after expiration of the 90-day period, whichever is earlier, enter the interim order as a final order. The final order may be appealed as provided by Title XI of the Act. The Agency must take final action in accordance with the Board's final order.
- b) USEPA Objection
  - 1) If USEPA objects to the proposed determination within 90 days after receipt, the Agency shall submit USEPA's objection and the Agency's comments and recommendation on the objection to the Board and permittee upon receipt of the objection. Within 15 days after receipt of USEPA's objection, the Agency must submit the Agency's comments and recommendation on the objection to the Board and permittee. [415 ILCS 5/39.5(16)(c)(ii)]
  - 2) The Board shall review its interim order in response to USEPA's objection and the Agency's comments and recommendation and issue a final order in accordance with Sections 32 and 33 of the Act within 60 days after receipt of the Agency's comments and recommendation on USEPA's objection. The Agency shall, within 90 days after receipt of such objection, respond to USEPA's objection in accordance with the Board's final order. [415 ILCS 5/39.5(16)(c)(ii)]

SUBPART E: MAXIMUM ACHIEVABLE CONTROL  
TECHNOLOGY DETERMINATIONS

## Section 106.500 General

- a) Description. The provisions of this Subpart will apply to any proceeding initiated by an owner or operator of a CAAPP source pursuant to Section 39.5(19)(a) or (e) of the Act challenging the Agency's determination not to utilize the hazardous air pollutant emission limitation proposed by the CAAPP source or the hazardous air pollutant limitation for a case-by-case maximum achievable control

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technology (MACT) proposed by the CAAPP source.

- b) Parties. The owner or operator of the CAAPP source who initiates the proceeding must be named as petitioner and the Agency must be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

**Section 106.502 Definitions**

The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise. If there is a conflict, the definitions of Section 39.5 of the Act will apply.

**Section 106.504 Initiation of Proceedings**

The owner or operator of a CAAPP source may initiate a proceeding before the Board by serving a petition upon the Agency and filing with the Clerk of the Board.

**Section 106.506 Petition Content Requirements**

A petition filed pursuant to Section 39.5(19)(a) and (e) of the Act must include:

- a) A detailed description of and justification for the emission limitation that is being proposed for the source and an explanation of how the emission limitation provides for the level of control required under Section 112 of the CAA (42 USC 7412);
- b) A petition filed pursuant to Section 39.5(19)(a) of the Act must also include justification for the Board to determine whether the emission limitation proposed by the owner or operator of the CAAPP source provides for the emission limitation equivalent to the emission limitation that would apply to the source if USEPA had promulgated the applicable emission standard pursuant to Section 112(d) of the CAA (42 USC 7412(d)) in a timely manner; and
- c) The Agency's notification of its refusal to adopt the CAAPP source's proposed emission limitation or the CAAPP source's MACT determination.

**Section 106.508 Response and Reply**

- a) The Agency may file a response to the petition of the owner or operator within 21 days after service of the petition.
- b) The owner or operator may file a reply within 21 days after the filing of any response.

**Section 106.510 Hearing**

The Board will hold at least one public hearing in the county where the CAAPP

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source is located. The Clerk of the Board will give notice of the petition and any hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

**Section 106.512 Burden of Proof**

The burden of proof will be on the petitioner to demonstrate that the emission limitation provides for the level of control required under Section 112 of the Clean Air Act.

**Section 106.514 Board Action**

*The Board shall determine whether the emission limitation proposed by the owner or operator or an alternative emission limitation proposed by the Agency provides for the level of control required under Section 112 of the Clean Air Act, or shall otherwise establish an appropriate emission limitation, pursuant to Section 112 of the Clean Air Act. [415 ILCS 5/39.5(19)(a) and (e)]*

SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER  
LESS THAN OR EQUAL TO 10 MICRONS (PM-10)

**Section 106.600 General**

- a) Description. The provisions of this Subpart will apply to any appeal initiated under 35 Ill. Adm. Code 212.702 by an owner or operator of a source pursuant to a finding by the Agency of culpability for an exceedance of the 24-hour ambient air quality standard for particulate matter less than or equal to 10 microns (PM-10) at 35 Ill. Adm. Code 243.120.
- b) Parties. The owner or operator of a source who initiated the proceeding will be named as the petitioner and the Agency will be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

**Section 106.602 Initiation of Proceedings**

The owner or operator of a source may initiate a proceeding before the Board by serving a petition for review of the Agency culpability determination and filing the petition with the Clerk of the Board.

**Section 106.604 Petition Content Requirements**

A petition for review filed pursuant to this Subpart must include:

- a) A copy of the letter, or other written communication, setting forth the Agency's finding of culpability;
- b) A clear identification of the county in which the source is located; and

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- c) A detailed description of, and justification for, the source's position that the Agency's finding of culpability is incorrect.

**Section 106.606 Response and Reply**

- a) The Agency must file a response to a petition appealing a determination of culpability within 21 days after service of the petition.
- b) The Agency's response must contain, at a minimum, the basis of its determination of the petitioner's culpability, including any meteorological, monitoring, or sampling data upon which the determination was made.
- c) The petitioner may file a reply within 7 days after the service of any response by the Agency.

**Section 106.608 Hearing**

- a) Within 14 days after a petition is filed, the Agency must publish notice of the petition in a newspaper of general circulation in the county in which the source is located. Within 30 days after the filing of the petition, any person may file with the Clerk of the Board a request for hearing on the petition.
- b) The hearing officer will schedule any hearing. The Clerk of the Board must give notice of the hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

**Section 106.610 Burden of Proof**

The burden of proof will be on the petitioner to demonstrate that the Agency's determination of culpability is incorrect.

SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL  
MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

**Section 106.700 Purpose**

The purpose of this Subpart is to set forth the criteria and procedures under which the Board or the Agency may terminate an EMSA, as defined in 35 Ill. Adm. Code 101.202.

**Section 106.702 Applicability**

- a) When the Agency terminates an EMSA under Section 52.3-4(b) of the Act, only Section 106.704 of this Subpart applies.
- b) This Subpart, except for Section 106.704, applies to proceedings in which the Board will determine whether to terminate an EMSA.

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**Section 106.704 Termination Under Section 52.3-4(b) of the Act**

- a) To terminate an EMSA under Section 52.3-4(b) of the Act, the Agency must determine that the sponsor's performance under the EMSA has failed to:
- 1) *Achieve emissions reductions or reductions in discharges of wastes beyond the otherwise applicable statutory and regulatory requirements through pollution prevention or other suitable means; or*
  - 2) *Achieve real environmental risk reduction or foster environmental compliance by other persons regulated under the Act in a manner that is clearly superior to the existing regulatory system.* [415 ILCS 5/52.3-1(b)]
- b) If the Agency terminates an EMSA under Section 52.3-4(b) of the Act, the sponsor may file an appeal with the Board. Appeals to the Board will be pursuant to 35 Ill. Adm. Code 105.Subparts A and B.

**Section 106.706 Who May Initiate, Parties**

- a) Only the Agency may commence a proceeding to terminate an EMSA under this Subpart.
- b) The Agency must be designated the complainant. The sponsor must be designated the respondent.
- c) Misnomer of a party is not a ground for a dismissal; the name of any party may be corrected at any time.

**Section 106.707 Notice, Statement of Deficiency, Answer**

- a) A proceeding to terminate an EMSA will be commenced when the Agency serves a notice of filing and a statement of deficiency upon the respondent and files one original plus 9 copies of the notice of filing and statement of deficiency with the Clerk.
- b) The statement of deficiency must contain:
- 1) The stated basis for the respondent's alleged deficient performance under Section 106.712(a) of this Subpart;
  - 2) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate provisions of the Act or regulations that apply to the pilot project that the EMSA does not address;
  - 3) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate the EMSA; and
  - 4) With respect to subsections (b)(1) through (b)(3) of this Section, the statement of deficiency must contain sufficient detail to advise the respondent of the extent and nature of the alleged violations to reasonably allow the respondent to prepare a defense.



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- c) The respondent must file an answer within 15 days after receipt of the statement of deficiency, unless the Board or the hearing officer extends the 15-day period for good cause. All material allegations of the statement of deficiency will be taken as admitted if not specifically denied by the answer, or if no answer is filed. Any facts that constitute an affirmative defense that would be likely to surprise the complainant must be plainly set forth in the answer before hearing.

**Section 106.708 Service**

- a) The Agency must serve a copy of the notice of filing and statement of deficiency either personally on the respondent or the respondent's authorized agent, or by registered or certified mail with return receipt signed by the respondent or the respondent's authorized agent. Proof must be made by affidavit of the person who makes personal service, or by properly executed registered or certified mail receipt. The Agency must file proof of service of the notice of filing and statement of deficiency with the Clerk immediately upon completion of service.
- b) The Agency and the respondent must serve all motions and all other notices personally, by First Class United States mail, with sufficient postage, or by overnight delivery by a nationally recognized courier service. The Agency and the respondent must file an original and 9 copies of the motions and notices with the Clerk with proof of service.
- c) Service is presumed complete upon personal service, four days after deposit in the United States First Class mail, with sufficient postage, or the next business day upon deposit with a nationally recognized courier service for overnight delivery.

**Section 106.710 Notice of Hearing**

- a) The Clerk will assign a docket number to each statement of deficiency filed. Any hearing will be held not later than 60 days after the respondent files the answer, subject to any extensions ordered under subsection (c) of this Section.
- b) The Chairman of the Board will designate a hearing officer and the Clerk will notify the parties of the designation. The hearing officer may be a Member of the Board if otherwise qualified.
- c) The hearing officer, after reasonable efforts to consult with the parties, will set a time and place for hearing. The Board or the hearing officer may extend the time for hearing if all parties agree or there are extreme and unanticipated or uncontrollable circumstances that warrant a delay. The Board or the hearing officer may delay the hearing more than once. In each event, the Board or the hearing officer will not delay the hearing for more than 30 days.
- d) The hearing will be held in the county in which the pilot project is

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- located, or in another county that the hearing officer designates for cause.
- e) The hearing officer or the Clerk will give notice of the hearing, at least 30 days before the hearing, to the parties under Section 106.708(b) of this Subpart, and to the public by public advertisement in a newspaper of general circulation in the county in which the pilot project is located.
- f) The Agency must give notice of each statement of deficiency and hearing under Section 106.708(b) of this Part at least 10 days before the hearing to:
- 1) All stakeholders named or listed in the EMSA; and
  - 2) Any person who submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card under the procedures set forth in 35 Ill. Adm. Code 187.404, if less than 100 persons attended the public hearing on the respondent's EMSA as indicated by signatures on the attendance sheet or signature cards.
- g) Failure to comply with this Section is not a defense to an involuntary termination proceeding under this Subpart, but the hearing officer may postpone the hearing upon the motion of any person prejudiced by a failure to comply with this Section.

**Section 106.712 Deficient Performance**

- a) For purposes of this Subpart, a respondent's performance under its EMSA is deficient if the Agency asserts and the Board finds that any of the following conditions exist:
- 1) The respondent misrepresented the factual basis for entering into the EMSA.
  - 2) The respondent failed to provide access to the pilot project for the Agency to monitor compliance with an EMSA.
  - 3) The respondent falsified any monitoring data, record-keeping information or reports regarding the pilot project.
  - 4) The respondent or the owner or operator of any federal or local failed to comply with any requirement of any federal or local environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with a court of competent jurisdiction or the appropriate authority has sent a notice of violation, complaint or other notice of failure to comply to the respondent or the owner or operator of the pilot project.
  - 5) The respondent or the owner or operator of the pilot project failed to comply with any requirement of any State environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with the Board, or the Agency has mailed a notice of violation to the respondent or the owner or operator of the pilot

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- project under Section 31(a) or (b) of the Act.
- 6) The respondent failed to comply with its EMSA, subject to any grace or cure periods or rights contained in the EMSA.
  - b) Any Board finding of deficient performance under subsection (a)(4) or (a)(5) of this Section will not be binding for any purpose or in any other proceeding under the Act, other than under this Subpart.
- Section 106.714 Board Decision**
- a) The Board will prepare a written opinion and order for all final determinations that will include findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law (supported by adequate reasoning) on all material issues.
  - b) The Board will render its decision as expeditiously as practicable. The Board will render a decision as an order that:
    - 1) Terminates the EMSA;
    - 2) Defers termination for a specified time, not to exceed 90 days from the date of the order, during which the respondent may rectify the deficient performance; or
    - 3) Rejects termination of the EMSA.
  - c) The Board may extend the time period under subsection (b)(2) of this Section for good cause.
  - d) The Board may order any or all of the following:
    - 1) Direct the respondent to cease and desist from violating the Act, the Board's regulations, or the EMSA;
    - 2) Require the respondent to provide performance assurance compensation in appropriate amounts;
    - 3) Require the respondent to post a sufficient performance bond or other security to assure that the respondent corrects the violation within the time that the Board prescribes;
    - 4) Enforce any remedy provision of the EMSA; and
    - 5) Order other relief as appropriate.
  - e) The Clerk will publish the order and opinion with the vote of each Board Member recorded and will notify the parties required to be notified of the hearing from which the order arose of the order and opinion.

**Section 106.720 Intervention**

- Section 106.716 Burden of Proof**
- The Agency has the burden to prove, by a preponderance of the evidence, that there has been deficient performance under the EMSA, as set forth in Section 106.712(a) of this Subpart.
- Section 106.718 Motions, Responses**
- a) All motions before a hearing must be presented to the hearing officer at least 10 days before the date of the hearing.

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- b) The complainant's motion to voluntarily dismiss an action as to any or all claims must be directed to the Board and may be made orally upon the hearing record, or may be made in writing at any time before the Board issues its decision.
- c) All motions must be served on all parties, including the Agency and its representative and the hearing officer, with proof of service.
- d) Unless made orally on the record during a hearing or unless the hearing officer directs otherwise, a motion must be in writing, must state the reasons for and grounds upon which the motion is made, and may be accompanied by any affidavits or other evidence relied on and, when appropriate, by a proposed order.
- e) Within 7 days after a written motion is served, or another period that the Board or hearing officer may prescribe, a party may file a response to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties will be deemed to have waived objection to the motion, but the waiver of objection does not bind the Board. The moving party does not have the right to reply, except as the hearing officer or the Board permits.
- f) No oral argument will be heard on a motion before the Board unless the Board directs otherwise. A written brief may be filed with a motion or an answer to a motion.
- g) The hearing officer may rule upon all motions, except that the hearing officer has no authority to dismiss, or rule upon a motion to dismiss or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof.
- h) No interlocutory appeal of a motion may be taken to the Board from a ruling of the hearing officer.
- i) After the hearing, the Board may review the hearing officer's rulings. The Board will set aside the hearing officer's ruling only to avoid material prejudice to the rights of a party. The hearing officer, if a member of the Board, may vote upon motions to review his or her rulings as hearing officer.
- j) Unless the Board orders or this Subpart provides otherwise, the filing of a motion will not stay the proceeding or extend the time to perform any act.

**Section 106.720 Intervention**

- a) Upon timely written motion and subject to the need to conduct an orderly and expeditious hearing, the Board will permit a person to intervene in an involuntary termination proceeding under this Subpart if the person submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card at hearing under the procedures set forth in 35 Ill. Adm. Code 187.404, or is named or listed in the respondent's EMSA as a stakeholder, and if the Board's final order may adversely affect the person.

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- b) The movant must file an original and 9 copies of a motion to intervene with the Board and serve a copy on each party not later than 48 hours before the hearing. The Board may permit a person to intervene at any time before the beginning of the hearing when that person shows good cause for the delay.
- c) An intervenor has all the rights of an original party, except that the Board may limit the rights of the intervenor in accordance with 35 Ill. Adm. Code 101.402.

**Section 106.722 Continuances**

The hearing officer will grant a motion to continue an involuntary termination proceeding under this Subpart when justice requires. All motions to continue must be supported by an affidavit or written motion before the hearing officer by the person or persons with knowledge of the facts that support the motion. However, if the Board determines that any involuntary termination proceeding under this Subpart is not proceeding expeditiously, the Board may order actions that it deems appropriate to expedite the proceeding.

**Section 106.724 Discovery, Admissions**

- a) Discovery, except requests to produce documents, admit facts and state the identity and location of persons with knowledge of facts, as set forth in subsection (b) of this Section, is not permitted unless the hearing officer orders otherwise.

b) Regarding any matter not privileged, the hearing officer may order a party to produce documents and to state the identity and location of persons with knowledge of facts upon the written request of any party when parties cannot agree on the legitimate scope of the requests. It is not a ground for objection that the documents will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence or is relevant to the subject matter involved in the pending proceeding.

- c) The hearing officer may order a party:

- 1) To state the identity and location of persons with knowledge of relevant facts.
- 2) To produce evidence that a party controls or possesses so that it may be inspected, copied or duplicated. The order may grant the right to reasonably inspect the pilot project.
- d) The hearing officer may at any time on his or her own initiative, or on motion of any party or witness, make a protective order as justice requires. The protective order may deny, limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.
- e) All objections to rulings of the hearing officer must be made in the record.

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- f) Section 106.718(d), (e), (f), (g), (h), (i) and (j) of this Subpart apply regarding procedures to rule on objections.
- g) Failure to comply with any ruling may subject the person to sanctions under 35 Ill. Adm. Code 101.Subpart H.
- h) A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request that the latter admit the truth of any specified relevant fact set forth in the request.
- i) A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request to admit to the genuineness of any relevant documents described in the request. Copies of the document must be served with the request unless copies have already been furnished.
- j) Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 15 days after service under subsection (h) or (i) of this Section, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement that denies specifically the matters on which the admission is requested or that sets forth in detail the reasons why the party cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If a party objects in writing to a part of the request, the remainder of the request must be answered within the period designated in the request. A denial must fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, the party must specify so much of it as is true and deny only the remainder. The hearing officer will hear any objection to a request or to an answer upon prompt notice and motion of the party making the request.
- k) Any admission made under this Section is for the purpose of the pending proceeding only. It does not constitute an admission by the party for any other purpose and may not be used against the party in any other proceeding.

**Section 106.726 Subpoenas**

- a) Upon any party's timely motion to the Board, or on motion of the hearing officer or the Board, the hearing officer or the Board may issue a subpoena to attend a hearing. The subpoena may include a command to produce evidence reasonably necessary to resolve the matter under consideration, subject to this Subpart's limitations on discovery. A copy of the subpoena must be served upon the Clerk.
- b) Every subpoena must state the title of the proceeding and command each person to whom it is directed to attend and give testimony at the time and place specified.
- c) The hearing officer or the Board, upon motion made promptly and in any

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

event at or before the time specified for compliance with the subpoena, may quash or modify the subpoena if it is unreasonable and oppressive.

- d) Failure of any witness to comply with a Board subpoena may subject the witness to sanctions under 35 Ill. Adm. Code 101.Subpart H.

**Section 106.728 Settlement Procedure**

- a) All parties to any proceeding in which a settlement or compromise is proposed must file with the Clerk before the time of the scheduled hearing a written statement, signed by the parties or their authorized representatives, that outlines the nature of, the reasons for, and the purpose to be accomplished by, the settlement. The statement must contain:
  - 1) A full stipulation of all material facts that pertain to the nature, extent and causes of the alleged violations;
  - 2) The nature of the relevant parties' operations and control equipment;
  - 3) Any explanation for past failures to comply and an assessment of the impact on the public from the failure to comply;
  - 4) Details about future plans for compliance, including a description of additional control measures and the dates on which they will be implemented; and
  - 5) The proposed performance assurance payment, if any.

- b) If an agreed settlement is filed under this Section, the Board may dismiss the proceeding without holding a hearing.

**Section 106.730 Authority of Hearing Officer, Board Members, and Board Assistants**

- a) The hearing officer has the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. The hearing officer has all powers necessary to these ends, including the authority to:
  - 1) Issue discovery orders;
  - 2) Rule upon objections to discovery orders;
  - 3) Make protective orders as justice requires, which may deny, limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party who obtains the materials;
  - 4) Administer oaths and affirmations;
  - 5) Rule upon offers of proof, receive evidence and rule upon objections to introducing evidence, subject to Section 106.732(b) of this Subpart;
  - 6) Regulate the course of the hearings and the conduct of the parties and their counsel;
  - 7) Examine witnesses solely to clarify the record of the hearing. When any party is not represented by counsel, the hearing officer

## POLLUTION CONTROL BOARD

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may examine and cross-examine any witness to insure a clear and complete record. However, the hearing officer may not exclude exhibits or other testimony because of the examination unless all parties agree; and

- 8) Except as otherwise provided, consider and rule as justice may require upon motions appropriate to an adjudicative proceeding.
- b) Any Board Member or assistant to a Board Member present at the hearing may advise the hearing officer and may interrogate witnesses, but does not have the authority to rule on objections or motions or to overrule the hearing officer during the hearing.

**Section 106.732 Order and Conduct of Hearing**

- a) The following will be the order of all involuntary termination hearings under this Subpart, unless modified by the hearing officer for good cause:
  - 1) Present, argue and dispose of preliminary motions on the matters that the statement of deficiency raises;
  - 2) Present opening statements;
  - 3) Complainant's case in chief;
  - 4) Respondent's case in chief;
  - 5) Complainant's case in rebuttal;
  - 6) Statements from interested citizens, as the hearing officer authorizes;
  - 7) Complainant's opening argument, which may include legal argument;
  - 8) Respondent's closing argument, which may include legal argument;
  - 9) Complainant's closing argument, which may include legal argument;
  - 10) Present and argue all motions before submitting the transcript to the Board; and
  - 11) A schedule to submit briefs to the Board.

- b) All hearings under this Subpart will be public, and any person not a party and not otherwise a witness for a party may submit written statements relevant to the subject matter of the hearing. Any party may cross-examine any person who submits a statement. If the person is not available to be cross-examined upon timely request, the written statement may be stricken from the record. The hearing officer will permit any person to offer reasonable oral testimony whether or not a party to the proceedings.
- c) All witnesses will be sworn.
- d) At the conclusion of the hearing, the hearing officer will make a statement about the credibility of witnesses. This statement will be based upon the hearing officer's legal judgment and experience and will indicate whether he or she finds credibility to be at issue in the proceeding and if so, the reasons why. This statement will become a part of the official record and will be transmitted by the hearing officer to each of the parties. No other statement will be made or be appropriate unless the Board orders otherwise.

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**Section 106.734 Evidentiary Matters**

The provisions of 35 Ill. Adm. Code 101 regarding admissible evidence, written narrative testimony, official notice, viewing premises, admitting business records, examining adverse parties or agents and hostile witnesses and compelling them to appear at hearing, and amendment and variance of pleadings and proof will apply to proceedings under this Subpart.

**Section 106.736 Post-Hearing Procedures**

The provisions of 35 Ill. Adm. Code 101 regarding default, transcripts, the record, briefs and oral arguments will apply to proceedings under this Subpart.

**Section 106.738 Motion After Entry of Final Order**

Within 35 days after the Board adopts a final order, any party may file a motion to rehear, modify or vacate the order or for other relief. Response to the motion must be filed within 14 days after the motion is filed. A motion filed within 35 days stays enforcement of the final order.

**Section 106.740 Relief from Final Orders**

- a) The Board may at any time correct errors in orders or other parts of the record that arise from oversight or omission or clerical mistakes. The Board may do so on its own initiative or on the motion of any party and after notice, if any, as the Board orders. During the pendency of an appeal, the Board may correct the mistakes before the appeal is docketed in the appellate court. While the appeal is pending, the Board may correct the mistakes with leave of the appellate court.
- b) On motion and upon terms that are just, the Board may relieve a party or a party's legal representative from a final order, for the following:
  - 1) Newly discovered evidence that by due diligence could not have been discovered in time under Section 106.714 of this Subpart;
  - 2) Fraud (whether previously denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
  - 3) Void order.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the Board entered the order but the motion is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record. All parties must be notified under Section 106.708(b) of this Subpart.
- d) This motion must be filed with the Board within 60 days after entry of the order.

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**Section 106.APPENDIX A Comparison of Former and Current Rules**

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

FORMER PART 106	CURRENT SECTION
106.101	106.200
106.102	106.202
106.103	106.200
106.104	106.208
106.201	106.202
106.202	101.602
	106.200
	106.210
106.301	106.202
	106.204
106.302	106.202
106.303	106.200
106.304	106.208
106.305	101.602
	106.200
	106.210
	104.402
106.411	104.404
106.412	104.406
106.413	104.416
106.414	104.422
106.415	104.424
	104.428
106.416	104.400
106.501	104.402
106.502	104.404
106.503	104.406
106.504	104.416
106.505	104.422
106.506	104.424
	104.428
106.507	106.300
106.601	106.302
106.602	106.304
	106.306
106.603	106.308
106.604	104.400
106.701	104.104
106.702	104.402
106.703	104.404
106.704	104.406
106.705	



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106.708

106.100

106.709

106.306

106.710

106.100

101.Subpart E

106.711

101.304

106.712

104.408

106.713

104.410

106.714

104.420

106.715

104.416

106.801

104.418

106.802

104.422

106.803

104.424

106.804

104.400

106.805

101.616

106.806

104.100

106.807

101.626

106.808

104.100

106.809

104.400

106.810

104.400

106.811

104.426

106.812

104.414

106.813

104.428

106.814

104.428

106.815

104.428

106.816

104.412

106.817

106.400

106.818

104.104

106.819

106.400

106.820

106.404

106.821

106.406

106.822

106.408

106.823

106.410

106.824

106.412

106.825

106.414

106.826

106.416

106.827

106.500

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106.502

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106.504

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106.840

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106.982

106.604

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106.608

106.610

106.700

106.702

101.202

106.102

106.704

106.706

106.707

106.708

106.710

106.712

106.714

106.716

106.718

106.720

106.722

106.724

106.726

106.728

106.730

106.732

106.734

106.736

106.738

106.740

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Regulatory and Informational Hearings and Proceedings

2) Code Citation: 35 Ill. Adm. Code 102

3) Section Numbers: Adopted Action:

102.100 Repealed  
 102.101 Repealed  
 102.102 Repealed  
 102.103 Repealed  
 102.104 Repealed  
 102.120 Repealed  
 102.121 Repealed  
 102.122 Repealed  
 102.140 Repealed  
 102.141 Repealed  
 102.142 Repealed  
 102.160 Repealed  
 102.161 Repealed  
 102.162 Repealed  
 102.163 Repealed  
 102.180 Repealed  
 102.181 Repealed  
 102.182 Repealed  
 102.183 Repealed  
 102.200 Repealed  
 102.201 Repealed  
 102.202 Repealed  
 102.220 Repealed  
 102.221 Repealed  
 102.222 Repealed  
 102.240 Repealed  
 102.241 Repealed  
 102.242 Repealed  
 102.260 Repealed  
 102.261 Repealed  
 102.280 Repealed  
 102.281 Repealed  
 102.282 Repealed  
 102.283 Repealed  
 102.284 Repealed  
 102.285 Repealed  
 102.300 Repealed  
 102.301 Repealed  
 102.320 Repealed  
 102.340 Repealed  
 102.341 Repealed  
 102.342 Repealed  
 102.343 Repealed

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## NOTICE OF ADOPTED REPEALER

102.344 Repealed  
 102.345 Repealed  
 102.346 Repealed  
 102.347 Repealed  
 102.348 Repealed  
 102.360 Repealed  
 102.361 Repealed  
 102.362 Repealed  
 102.363 Repealed

4) Statutory Authority: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 27, 28, 28.2, 29 and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 27, 28, 28.2, 29 and 41] and authorized by Section 26 of the Act [415 ILCS 5/26].

5) Effective Date of Repealer: January 1, 2001

6) Does this rulemaking contain an automatic repeal date? No

7) Do these rules contain incorporations by reference? No

8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5504

10) Has JCAR issued a Statement of Objections to these rules?: No

11) Differences between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes

13) Will these rules replace emergency rules currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: In an effort to make the Board more accessible to the lay person, the Board proposes new user-friendly procedural rules that simplify, clarify, streamline and update the rules where necessary.

16) Information and questions regarding this adopted repealer shall be directed to:

Carol Sudman  
 600 S. Second St., Suite 402

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED REPEALER

Springfield, Illinois 62701  
(217) 524-8509

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1) Heading of the Part: Regulatory and Informational Hearings and Proceedings

2) Code Citation: 35 Ill. Adm. Code 102

3) Section Numbers: Adopted Action:

102.100	New Section
102.102	New Section
102.104	New Section
102.106	New Section
102.108	New Section
102.110	New Section
102.112	New Section
102.200	New Section
102.202	New Section
102.204	New Section
102.206	New Section
102.208	New Section
102.210	New Section
102.212	New Section
102.300	New Section
102.302	New Section
102.304	New Section
102.306	New Section
102.400	New Section
102.402	New Section
102.404	New Section
102.406	New Section
102.408	New Section
102.410	New Section
102.412	New Section
102.414	New Section
102.416	New Section
102.418	New Section
102.420	New Section
102.422	New Section
102.424	New Section
102.426	New Section
102.428	New Section
102.430	New Section
102.500	New Section
102.502	New Section
102.504	New Section
102.600	New Section
102.602	New Section
102.604	New Section
102.606	New Section
102.608	New Section

## POLLUTION CONTROL BOARD

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102.610 New Section  
 102.612 New Section  
 102.614 New Section  
 102.700 New Section  
 102.702 New Section  
 102.704 New Section  
 102.706 New Section  
 APPENDIX A New Section

- 4) Statutory Authority: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, and 41] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

- 5) Effective Date of Rules: January 1, 2001

- 6) Does this rulemaking contain an automatic repeal date? No

- 7) Do these rules contain incorporations by reference? No

- 8) The adopted rules, including any material incorporated by reference, are on file in the Board's Chicago office and are available for public inspection.

- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5531

- 10) Has JCAR issued a Statement of Objection to these rules? No

- 11) Differences between proposal and final version: In addition to technical changes and clarifications, the Board requires in Subpart B that when a State agency is the rulemaking proponent, the State agency must submit the proposed rule electronically. See, e.g., 102.202(i). The Board adds this requirement elsewhere in Part 102 when the rules specify the required contents of a proposal. In addition, each proponent seeking to amend Board rules must certify that the proposal amends the most recent version of the rules as published on the Board's Web site or as received from the Clerk. See 102.202(h).

Furthermore, the Board has added a new provision to address the requirements of Section 27(b) of the Act (415 ILCS 5/27(b) (1998)), noted above, with respect to requesting that DCCA conduct a study of the economic impact of the proposed rules. The Board must request that DCCA conduct an economic impact study. The Board must conduct at least one hearing on the economic impact of proposed rules. At this hearing, the Board must, among other things, consider DCCA's study or present any explanation DCCA gives for not producing a study. See Section 102.414.

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- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter? Yes
- 13) Will these rules replace emergency rules currently in effect? No
- 14) Are there any amendments pending on this Part? No

- 15) Summary and Purpose of Rules: These rules set forth the rulemaking requirements of the IAPA (first notice publication in the *Illinois Register*; second notice review by JCAR; filing with and publication by the Administrative Code Unit of the Secretary of State), along with those of the Act (notice; hearing; entry of opinion and order).

The rules implement Section 28.5 of the Act (415 ILCS 5/28.5 (1998)), which establishes a rulemaking procedure to speed adoption of Agency-proposed rules required by the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), as amended. The Board adds a provision to reflect amendments to Section 27(b) of the Act (415 ILCS 5/27(b) (1998)). Consistent with Section 28.5 and these amendments, the Board will hold a second hearing to, at a minimum, consider the Department of Commerce and Community Affairs' (DCCA) economic impact study of the proposed rules, or to admit into the record DCCA's statement declining to conduct a study.

Subpart E addresses the procedures associated with the Agency certifying that its proposed rule is federally required pursuant to Section 28.2 of the Act (415 ILCS 5/28.2 (1998)). These include procedures by which a person can challenge the Agency's certification. See Section 102.502.

A more detailed discussion of these proposed rules is contained in the Board's opinion and order in R00-20, which the Board adopted on December 21, 2000. The opinion and order are available from the Board's Chicago office and on the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

- 16) Information and questions regarding these adopted rules shall be directed to:

Carol Sudman  
 PCB  
 600 S. Second St., Ste. 402  
 Springfield, Illinois 62701  
 (217) 524-8509

The opinion and order for this rule (R00-20) are available on the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). For copies please contact:

Dorothy Gunn, Clerk  
 PCB  
 100 W. Randolph St., Suite 11-500  
 Chicago, IL 60601  
 (312) 814-3620

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## NOTICE OF ADOPTED RULES

The full text of the adopted rules begins on the next page:

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## NOTICE OF ADOPTED RULES

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

## PART 102

## REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

## SUBPART A: GENERAL PROVISIONS

Section  
102.100 Applicability  
102.102 Severability  
102.104 Definitions  
102.106 Types of Regulatory Proposals  
102.108 Public Comments  
102.110 Waiver of Requirements  
102.112 Other Proceedings

SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE  
CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS, AND SITE-  
SPECIFIC REGULATIONS

Section  
102.200 Proposal for Regulations of General Applicability  
102.202 Proposal Contents for Regulations of General Applicability  
102.204 Proposal of RCRA Amendments  
102.206 Notice of Site-Specific RCRA Proposals  
102.208 Proposal for Site-Specific Regulations  
102.210 Proposal Contents for Site-Specific Regulations  
102.212 Dismissal

SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA) FAST TRACK  
RULEMAKING

Section  
102.300 Applicability  
102.302 Agency Proposal  
102.304 Hearings  
102.306 Prefiled Testimony

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,  
PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING  
CONFERENCES, AND HEARINGS

Section  
102.400 Service and Filing of Documents  
102.402 Motions, Production of Information, and Subpoenas  
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## APPENDIX A Comparison of Former and Current Rules

AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, and 41] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

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SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 1970; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 1985; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. 20472, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 587, effective JAN 1 1991.

## SUBPART A: GENERAL PROVISIONS

## Section 102.100 Applicability

- a) This Part applies to all regulatory and informational hearings and proceedings, and must be read in conjunction with 35 Ill. Adm. Code 101. Hearings conducted pursuant to this Part are quasi-legislative in nature and the purpose of the hearings is to gather information and comments to guide the Board in its rulemaking process. All testimony must be sworn.
- b) All persons taking part in these hearings are participants, rather than parties as in contested cases. Non-attorneys may represent themselves and others at regulatory hearings and may ask questions of witnesses or give testimony or comment as allowed by the hearing officer.

## Section 102.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, the adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

## Section 102.104 Definitions

For the purpose of this Part, words and terms will have the meanings as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

## Section 102.106 Types of Regulatory Proposals

- a) The Act provides for 4 types of regulatory proposals:

- 1) Identical-in-substance rulemakings, as defined in Sections 7.2, 13.3, 28.2 and 28.4 of the Act [415 ILCS 5/7.2, 13.3, 28.2, and 28.4];
- 2) Federally required rules, as defined in Section 28.2 of the Act [415 ILCS 5/28.2];
- 3) Other regulatory proposals, both of general applicability and not of general applicability as allowed by Sections 26, 27 and 28 of the Act [415 ILCS 5/26, 27, and 28]; and

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- 4) Clean Air Act fast track rulemakings as defined by Section 28.5 of the Act [415 ILCS 5/28.5].
- b) The IAPA provides for three types of rulemakings:
  - 1) General rulemaking pursuant to Section 5-40 of the IAPA [5 ILCS 100/5-40];
  - 2) Emergency rulemaking pursuant to Section 5-45 of the IAPA [5 ILCS 100/5-45]; and
  - 3) Peremptory rulemaking pursuant to Section 5-50 of the IAPA [5 ILCS 100/5-50].

**Section 102.108 Public Comments**

- a) The Board will accept written comments from any person concerning a regulatory proposal during the first notice period as defined in Section 102.604 of this Part. However, when adopting identical-in-substance regulations, the Board will accept written comments from USEPA and other persons for at least 45 days after the date of publication of the proposed regulations or amendments in the Illinois Register in accordance with Section 102.610 of this Part.
- b) Any person may submit written comments on any proposal within 14 days after the receipt of the hearing transcript in Board offices unless otherwise specified by the hearing officer or the Board.
- c) Comments must be filed with the Clerk and served in accordance with 35 Ill. Adm. Code 101.Subpart C, upon the Environmental Protection Agency (Agency), Department of Natural Resources (DNR), the Attorney General (if a participant), the proponent, and the participants on any service list established by the hearing officer pursuant to Section 102.422 of this Part unless otherwise specified by the hearing officer or the Board.
- d) Comments that are not timely filed or properly served will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.

**Section 102.110 Waiver of Requirements**

The Board may waive any of the non-statutory requirements of this Part upon a showing by a person that a particular requirement would create an undue burden on that person such as where the burden of compliance imposes financial costs that would preclude further participation, or where compliance would result in the provision of information already provided in that proceeding.

**Section 102.112 Other Proceedings**

Pursuant to Section 5(d) of the Act or other applicable law, the Board may conduct such other noncontested or informational hearings as may be necessary to accomplish the purposes of the Act or other applicable law. The hearings may include inquiry hearings to gather information on any subject the Board is authorized to regulate.

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**SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE  
CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS,  
AND SITE-SPECIFIC REGULATIONS**

**Section 102.200 Proposal for Regulations of General Applicability**

Any person may submit a regulatory proposal for the adoption, amendment, or repeal of a regulation. The original and 9 copies of each proposal must be filed with the Clerk and one copy each with the Attorney General, the Agency, and DNR.

**Section 102.202 Proposal Contents for Regulations of General Applicability**

Each proponent must set forth the following in its proposal:

- a) The language of the proposed rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the proposal, including environmental, technical, and economic justification. The statement must discuss the applicable factors listed in Section 27(a) of the Act. The statement must include, to the extent reasonably practicable, all affected sources and facilities and the economic impact of the proposed rule;
- c) A synopsis of all testimony to be presented by the proponent at hearing;
- d) Copies of any material to be incorporated by reference within the proposed rule pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75];
- e) Proof of service upon all persons required to be served pursuant to Section 102.422 of this Part;
- f) Unless the proponent is the Agency or DNR, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.410(b) of this Part;
- g) When the Agency proposes a rule it believes is federally required, a certification in accordance with Section 102.500 of this Part;
- h) For a proposed rule that amends an existing Board rule, a written statement or certification that the proposal amends the most recent version of the rule as published on the Board's Web site or as obtained from the Clerk;
- i) When the proponent is a State Agency, an electronic version of the information required under subsection (a) of this Section; and
- j) When any information required under this Section is inapplicable or unavailable, a complete justification for the inapplicability or unavailability.

**Section 102.204 Proposal of RCRA Amendments**

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In addition to satisfying the requirements of Section 102.202 of this Part, any proposal to amend the RCRA regulations must:

- a) Indicate whether it is made pursuant to the provisions of Section 22.4(a), 22.4(b) or 22.4(c) of the Act;
- b) Include a listing of all amendments to the corresponding federal regulations since the period encompassed by the last amendment of the Board's RCRA rules; and
- c) Include a certificate of service indicating that a copy of the proposal has been served on the USEPA. Service must be made at the following address:

Director, Waste Management Division  
USEPA, Region V  
77 W. Jackson Street  
Chicago, Illinois 60604

**Section 102.206 Notice of Site-Specific RCRA Proposals**

- a) Public notice of hearings on site-specific RCRA proposals will be given at least 30 days before the date of the hearing.

- b) In addition to the requirements of Section 28 of the Act, the Board, at a minimum, will give notice of hearings on a site-specific RCRA proposal to the following persons:

- 1) Federal agencies as designated by the USEPA;
- 2) Illinois Department of Transportation;
- 3) Illinois Department of Natural Resources;
- 4) Illinois Department of Public Health;
- 5) The Governor or any other state adjacent to the county in which the facility is located; and
- 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.

- c) In addition to the methods of notice by publication of Section 28 of the Act and Section 102.416 of this Part, the Board will give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2) and (d)(4) through (d)(8) of this Section.

- d) A hearing notice on a site-specific RCRA proposal will include the following information:

- 1) The address of the Board office;
- 2) Name and address of the proponent and, if different, of the facility for which the site-specific rule is sought;
- 3) A brief description of the business conducted at the facility and the activity described in the proposal;
- 4) A description of the relief requested in the proposal;
- 5) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information,

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including copies of the proposal:

- 6) The name, address and telephone number of the Agency's representative in the rulemaking;
- 7) A description of any written comment period or a statement that a comment period will be established in the future;
- 8) A statement that the record in the rulemaking is available at the Board office for inspection, except those portions that are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public. Any such claim must be made in accordance with 35 Ill. Adm. Code 130;
- 9) A statement that site-specific rules may be adopted pursuant to 415 ILCS 5/27 and Section 102.202 of this Part, and a citation to the Board regulations sought to be modified; and
- 10) Any additional information considered necessary or proper.

**Section 102.208 Proposal for Site-Specific Regulations**

Any person may submit a written proposal for the adoption, amendment or repeal of a substantive site-specific regulation. The original and 9 copies of each proposal must be filed with the Clerk of the Board and one copy each served upon the Agency, DNR, and the Attorney General.

**Section 102.210 Proposal Contents for Site-Specific Regulations**

Proponents of site-specific regulations other than those relating to RCRA must comply with the requirements of Section 102.202 of this Part in addition to the following requirements:

- a) The proposal must set forth the language of the proposed site-specific rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring and language being deleted must be indicated by strike-outs. If the proposed site-specific rule seeks an exemption from or modification of a rule of general applicability, the proposed site-specific rule may not be proposed as an amendment to the general rule. Instead, the site-specific rule must be proposed as its own Section;
- b) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal must specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the person or site. The documentation must include relevant information on other similar persons' or sites' ability to comply with the general rule. Where relevant to the Board's consideration, the proposal must also include information pertaining to existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, and the nature of the existing air quality or receiving body of water [415 ILCS 5/27(a)];

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- c) The proposal must describe the person or site for which regulatory change is sought and the area affected by the proposed change. The proposal must also include a detailed assessment of the environmental impact of the proposed change, and include a description of available treatment or control options;
- d) The proposal must demonstrate that the Board may grant the requested relief consistent with federal law governing the subject of the proposal (e.g., Underground Injection Control program, Resource Conservation and Recovery Act, etc.);
- e) When the proponent is a State agency, the proponent also must provide an electronic version of the information required under subsection (a) of this Section; and
- f) When any information required under this Section is inapplicable or unavailable, the proposal must provide a complete justification for the inapplicability or unavailability.

**Section 102.212 Dismissal**

- a) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
- b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal. In making this determination, the Board will consider factors including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
- c) A proposal will be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the statutory authority on which the proposal is made. In all such cases, a statement informing the proponent of the Board's basis for dismissal will be made. Dismissal of a proposal will not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by applicable law or Board regulations.
- d) Any person may file a motion challenging the statutory authority or sufficiency of the proposal pursuant to 35 Ill. Adm. Code 101.Subpart E.

SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA) FAST TRACK  
RULEMAKING

**Section 102.300 Applicability**

This Subpart applies to the adoption of rules proposed by the Agency and required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA): A "fast-track" rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For purposes of this Section, "requires to be adopted" refers only to those

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regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules. [415 ILCS 5/28.5(a), (c)]

**Section 102.302 Agency Proposal**

- a) When proposing a regulation required by the CAAA, the Agency must meet the following requirements:
  - 1) The proposal must set forth the proposed rule, which must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
  - 2) The proposal must have a cover sheet that prominently states that the Agency proposes the rule under Section 28.5 of the Act, unless another provision of the Act specifies the method for adopting a specific rule [415 ILCS 5/28.5(c)];
  - 3) The proposal must clearly identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other documents upon which the rule is based [415 ILCS 5/28.5(e)(3)];
  - 4) The proposal must include supporting documentation for the rule that summarizes the basis of the rule [415 ILCS 5/28.5(e)(4)];
  - 5) The proposal must describe in general the alternative selected and the basis for the alternative [415 ILCS 5/28.5(e)(5)];
  - 6) The proposal must summarize the economic and technical data that the Agency relied upon in drafting the proposed rule;
  - 7) The proposal must include a list of any documents that the Agency directly relied upon in drafting the proposed rule or that the Agency intends to rely upon at hearing, and copies of the documents;
  - 8) The proposal must set forth a description of the geographical area to which the rule is intended to apply, a description of the process or processes affected, and identification by classes of the entities expected to be affected, and a list of sources expected to be affected by the rule to the extent known to the Agency [415 ILCS 5/28.5(e)(8)]; and
  - 9) The proposal must include a diskette containing the information required under subsection (a)(1) of this Section.
- b) If the proposal fails to meet any of the requirements of subsection (a) of this Section, the Board may decide not to accept the proposal for filing.

**Section 102.304 Hearings**

- a) Within 14 days after the receipt of a rule the Board will file the proposed rule for first notice and schedule all hearings. Additionally, the Board will send notice to the appropriate newspaper of the scheduled hearing. The notice will be published by the newspaper at least 30 days prior to the date of the hearing.
- b) The first hearing will be held within 55 days after receipt of the

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rule and is reserved for the Agency's testimony and questions of the Agency's witnesses.

- c) Within 7 days after the first hearing, any person may request a second hearing. The request may be made on the record at the first hearing or in writing. If done in writing it must be filed with the Board and served upon the service list.
- d) A second hearing will be held to hear comments on Department of Commerce and Community Affairs' economic impact study of the proposed rules. At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Community Affairs' explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as part of any Board hearing considering such new rules. [415 ILCS 5/27(b)] See also Section 102.414 of this part. The second hearing must also permit the presentation of testimony, documents, and comments by affected entities and all other interested persons. [415 ILCS 5/28.5(g)]
- e) The third hearing shall be scheduled to commence within 14 days after the first day of the second hearing and shall be devoted solely to any Agency response to the material submitted at the second hearing and to any response by other parties [415 ILCS 5/28.5(g)]. In order to cancel the third hearing, the Agency must state on the record at hearing that it and the affected entities are in agreement or notify the Board and the service list in writing.
- f) In order to meet statutory deadlines, hearing dates may be chosen by the assigned Board member and hearing officer without consultation with the participants. CAAA hearings need only be held in one affected area of the State.

**Section 102.306 Prefiled Testimony**

- a) The hearing officer will close the service list for purposes of prefiled testimony at 4:30 p.m. 16 days before the date of hearing.
- b) Ten days before the hearing, copies of prefiled testimony must be filed with the Clerk and served upon all people who are on the service list as closed pursuant to subsection (a) of this Section.
- c) The Board may grant a waiver of the prefiling deadline or service requirement for good cause.
- d) Participants who do not prefile their testimony will only be allowed to testify if time remains in that hearing day. The hearing will not be continued from day to day to accommodate participants who do not prefile.

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,  
PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING  
CONFERENCES, AND HEARINGS

**Section 102.400 Service and Filing of Documents**

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All documents must be served and filed in accordance with 35 Ill. Adm. Code 101. Subpart C.

**Section 102.402 Motions, Production of Information, and Subpoenas**

Motion practice, production of information and the issuance of subpoenas in regulatory proceedings is governed by 35 Ill. Adm. Code 101. All motions and responses must be filed with the Board and served upon the hearing officer, the proponent, the Agency, and all persons on any service list established pursuant to Section 102.422(b) of this Part.

**Section 102.404 Initiation and Scheduling of Prehearing Conferences**

- a) To the extent consistent with any deadline for adoption of any regulations mandated by State or federal law, prior to initiating any hearing on a regulatory proposal, the Board may assign a qualified hearing officer who may schedule a prehearing conference between the proponents and any or all of the potentially affected persons [415 ILCS 5/27(d)].
- b) The hearing officer may schedule a prehearing conference on his or her own motion, or on the motion of the proponent or any potentially affected person. A "proponent" or a "potentially affected person" is any person, as defined by the Act and 35 Ill. Adm. Code 101.202, who demonstrates any nexus to the source of the pollutant to be controlled by the proposal or who shows some impact from the pollutant to be controlled by the proposal. A motion to schedule a prehearing conference must be directed to the hearing officer.
- c) In accordance with Section 27(d) of the Act, the notice requirements of Section 28 of the Act and Section 102.416 will not apply to prehearing conferences. However, the hearing officer will give notice to the proponents and any person who is included on the notice list of that proposal.

**Section 102.406 Purpose of Prehearing Conference**

The purpose of a prehearing conference is:

- a) To maximize understanding of the intent and application of the proposal;
- b) To reach agreement on aspects of the proposal, if possible; and
- c) To attempt to identify and limit the issues of disagreement among the participants to promote efficient use of time at hearing. [415 ILCS 5/27(d)]

**Section 102.408 Prehearing Order**

- a) No record need be kept of the prehearing conference, nor shall any participant or the Board be bound by any discussions conducted at the prehearing conference [415 ILCS 5/27(d)].



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- b) Notwithstanding subsection (a) of this Section, with the consent of all participants in the prehearing conference, the hearing officer may enter a prehearing order delineating issues to be heard, agreed facts, and other matters [415 ILCS 5/27(d)].
- c) If the participants in the prehearing conference agree to have a prehearing order entered pursuant to subsection (b) of this Section, the hearing officer may require that those participants furnish a draft of a proposed order setting forth the substance of the agreements reached at the prehearing conference. The hearing officer will enter that order if he agrees that it sets forth the substance of the agreement. The order will identify which participants have agreed to the substance of the order.
- d) A prehearing order will not be binding on non-participants in the prehearing conference [415 ILCS 5/27(d)].

**Section 102.410 Authorization of Hearing**

- a) The Clerk will assign a docket number to any proposal. All regulatory proposals will be placed on the Board agenda for determination of adequacy under the applicable law and this Part. The proponent must cure any inadequacy identified by Board order before the proposal will proceed to hearing.
- b) The Board will schedule a hearing on a proposal if it finds that the proposal is supported by an adequate statement of reasons, is accompanied by a petition signed by at least 200 persons, is not plainly devoid of merit and does not deal with a subject on which a hearing has been held within the preceding six months [415 ILCS 5/28(a)].
- c) In accordance with Section 28(a) of the Act, if a proposal is made by the Agency, or DNR, the Board shall schedule a public hearing without regard to the above conditions in subsection (b) of this Section as soon as practicable [415 ILCS 5/28(a)].
- d) Pursuant to Section 28 of the Act, the Board may also in its discretion schedule a public hearing upon any proposal without regard to the above conditions in subsection (b) of this Section [415 ILCS 5/28(a)].
- e) If the Board determines that a proposal meets the requirements of subsection (b) of this Section or is otherwise adequate under applicable law, and if any required filing fee has been paid, the Board will issue an order accepting the proposal for hearing. Such an order will be construed as starting the time clock for purposes of any first notice publication deadlines pursuant to Sections 28.2 and 28.5 of the Act.
- f) When the Board authorizes a hearing, the Chairman will designate one or more attending Board members and a qualified hearing officer. A member of the Board may serve as hearing officer if otherwise qualified.
- g) The Board may consolidate proposals for hearing or decision.

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**Section 102.412 Scheduling of Hearings**

- a) Except as otherwise provided by applicable law, no substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned. In the case of site-specific rules, a public hearing will be held in the affected county. Except as otherwise provided by applicable law, in the case of state-wide regulations, hearings shall be held in at least two areas. [415 ILCS 5/28(a)]
- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing, or written. The movant must show that he exercised due diligence in his participation in the proceeding and why an additional hearing, as opposed to the submission of written comments pursuant to Section 102.108 of this Part, is necessary.

**Section 102.414 Hearings on the Economic Impact of New Proposals**

- a) In accordance with Section 27(b) of the Act, except as otherwise provided by applicable law, before the adoption of any proposed rules, the Board shall request that the Department of Commerce and Community Affairs conduct a study of the economic impact of the proposed rules. The Board shall conduct at least one public hearing on the economic impact of those new rules. At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Community Affairs' explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as a part of any Board hearing considering such new rules. In adopting any such new rule, the Board shall, in its written opinion, make a determination, based upon the evidence in the public hearing record, whether the proposed rule has any adverse economic impact on the people of the State of Illinois. [415 ILCS 5/27(b)]
- b) If information of the economic impact of a proposed regulation is given at a general hearing on the proposal, the Board need not hold a special hearing on only the economic impact.

**Section 102.416 Notice of Hearing**

- a) The hearing officer will set a time and place for hearing. The Clerk will give notice of the date of the hearing as follows or as otherwise required by applicable law:
  - 1) By notice in the Board's Environmental Register and on the Board's Web site;

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- 2) At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned. The notice will include, the date, time, place and purpose of such hearing [415 ILCS 5/28(a)]; and
- 3) Where required by federal law, including air pollution and RCRA proposals, newspaper notice will be published at least 30 days prior to the hearing date.
- b) In accordance with Section 28(a) of the Act or as otherwise required by applicable law, the Clerk will give notice by mail to the proponent and to all persons who are on the notice list in accordance with Section 102.422 of this Part.
- c) Hearings that are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsections (a) and (b) of this Section.

**Section 102.418 Record**

All oral testimony will be recorded stenographically. The proposal and all attachments, the transcript, all written testimony, all exhibits admitted in connection with the hearing, and all written submissions filed with the Clerk under Section 102.108 of this Part before or after the close of the hearing will constitute the record.

**Section 102.420 Authority of the Hearing Officer**

As necessary to conduct the regulatory hearing, the hearing officer will have the same authorities in rulemaking proceedings as those set forth in 35 Ill. Adm. Code 101.Subpart F.

**Section 102.422 Notice and Service Lists**

- a) The hearing officer will maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their names and addresses to the hearing officer or the Clerk's office concerning the proposal. Notice of all Board actions and hearing officer orders will be given to all persons included on the notice list.
- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. The hearing officer may direct participants to serve copies of all documents upon the persons listed on the service list. In deciding whether to establish a service list, the hearing officer will consider factors including the complexity of the proceeding and the number of participants. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list.
- c) The Board will not accept general requests to appear on all notice lists. Interested persons must submit their names for each proceeding

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in accordance with subsection (a) of this Section.

**Section 102.424 Prehearing Submission of Testimony and Exhibits**

- a) The proponent must submit all written testimony and any related exhibits 21 days prior to the hearing at which the witness testifies, unless the hearing officer directs otherwise to prevent material prejudice or undue delay.
- b) The hearing officer may require the prehearing submission of testimony, questions, responses, answers, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that such a procedure will provide for a more efficient hearing.
- c) The original and 9 copies of any prehearing testimony, questions, answers, responses, or exhibits must be filed with the Clerk. The hearing officer, the Agency, and, if a participant, the Attorney General and DNR must each be served with one copy of any prehearing testimony, questions, answers, responses, or exhibits. One copy of any prehearing testimony, questions, answers, responses, or exhibits must also be served upon the proponent and each participant on any service list, unless otherwise specified or limited by the hearing officer. The service must be initiated on or before the date that copies are filed with the Clerk.
- d) All testimony, questions, answers, responses, and exhibits must be served and submitted in the form required by 35 Ill. Adm. Code 101.Subpart C and labeled with the docket number of the proceeding, the name of the witness submitting the material or exhibit, and the title of the material or exhibit.
- e) The proponent and each participant who has filed testimony, questions, answers, responses, or exhibits before hearing must bring the number of copies designated by the hearing officer of that material and exhibits to the hearing.
- f) Testimony, questions, answers, responses, and exhibits submitted prior to hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the material or exhibit read. All persons testifying will be sworn and will be subject to examination. Modifications to previously submitted material and exhibits may be allowed by the hearing officer at hearing provided that the modifications are either non-substantive in nature or would not materially prejudice another person's participation at hearing. Objections to the modifications are waived unless raised at hearing.
- g) Where prehearing submission of testimony, questions, answers, responses, or exhibits is required pursuant to subsection (a) or (b) of this Section, any material or exhibit that is not filed in a timely manner will be allowed only as time permits, and only where its submission will not materially prejudice the proponent or any other participant.

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**Section 102.426 Admissible Information**

All information that is relevant and not repetitious or privileged will be admitted by the hearing officer.

**Section 102.428 Presentation of Testimony and Order of Hearing**

- a) All witnesses at hearings must be sworn;
- b) Testimony must be in narrative form; and
- c) Proponents must present testimony in support of the proposal first. Any questions or testimony in support of or opposition to the proposal must follow as directed by the hearing officer.

**Section 102.430 Questioning of Witnesses**

All witnesses will be subject to questioning by any person. Repetitious, irrelevant, harassing, or cumulative questioning will be prohibited by the hearing officer. The Board will not consider as substantive evidence any unsworn information that is presented in the form of a question during questioning of any witness.

## SUBPART E: CERTIFICATION OF REQUIRED RULES

**Section 102.500 Agency Certification**

- a) When the Agency proposes a rule which it believes to be a required rule, as defined by Section 28.2(a) of the Act the Agency shall so certify in its proposal, identifying the federal law to which the proposed rule will respond and the rationale upon which the certification is based [415 ILCS 5/28.2(b)]. The certification must include a citation to the specific section of the specific federal law to which the proposed rule will respond.
- b) The Board shall either accept or reject the certification within 45 days and shall reference the certification in the first notice of the proposal published in the Illinois Register as provided by the Illinois Administrative Procedure Act [415 ILCS 5/28.2(b)].

**Section 102.502 Challenge to Agency Certification**

- a) If any person wishes to challenge the Agency's certification that a proposed rule is a required rule, that person must file an objection to that certification within 21 days after the date of the Board's order accepting a proposal for hearing. The objection must state the reasons that the objector believes that the proposed rule is not a required rule, and must include all arguments that the objector wishes the Board to consider. A copy of the objection must be served upon the Agency and DNR.
- b) The Agency may file a response to any objection within 14 days after

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the service of that objection. No reply by the objector will be allowed, unless the Board orders otherwise to avoid material prejudice.

- c) No hearing will be held on any objection filed pursuant to this Section.

**Section 102.504 Board Determination**

- a) The Board will rule upon any objection filed pursuant to this Subpart within 60 days after the date that the Board accepts a proposal for hearing.
- b) In ruling upon an objection to an Agency certification, the Board will consider all information in the record of that proceeding, including the proposal, the objection, and the Agency response to the objection. The burden of proof is on the objector.
- c) The Board will give notice of its determination to the objector, the Agency, DNR, and any person who has asked to be placed on the notice list pursuant to Section 102.422 of this Part for that proposal.
- d) Orders entered pursuant to this Section are interlocutory in nature and may be appealed only pursuant to 35 Ill. Adm. Code 101.308.

## SUBPART F: BOARD ACTION

**Section 102.600 Revision of Proposed Regulations**

- a) The Board may revise the proposed regulations before adoption upon its own motion or in response to suggestions made at hearing and in written comments made prior to second notice. No additional hearing on the revisions need be held.
- b) Unless otherwise provided by applicable law, the Board may revise the proposed regulations after hearing in response to objections or suggestions made by the Joint Committee on Administrative Rules (JCAR) pursuant to subsection (b) of Section 5.40 and subsection (a) of Section 5.110 of the Illinois Administrative Procedure Act. The Board may make the revision where it finds:
  - 1) That such objections or suggestions relate to the statutory authority upon which the regulation is based, whether the regulation is in proper form, or whether adequate notice was given; and
  - 2) That the record before the Board is sufficient to support such a change without further hearing. [415 ILCS 5/28(a)]

**Section 102.602 Adoption of Regulations**

The Board adopts first notice, second notice and final opinions and orders in regulatory matters. Only the first notice proposal and the final adopted rules are published by the Secretary of State in accordance with the IAPA. In adopting any new regulation, except a required rule or an

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identical-in-substance regulation or as applicable law otherwise provides, the Board shall, in its written opinion, make a determination, based upon the evidence in the public hearing record, including, but not limited to, the economic impact study, as to whether the proposed rule has any adverse economic impact on the people of the State of Illinois [415 ILCS 5/27(b)].

**Section 102.604 First Notice of Proposed Regulations**

Except when otherwise directed by applicable law, the Board will give first notice of its proposed adoption, amendment, or repeal of regulations pursuant to Section 5-40 of the IAPA [5 ILCS 100/5-40]. The first notice period will be at least 45 days, and will begin on the day that first notice is published in the Illinois Register. The Board will accept written comments from any person concerning the proposed regulations during the first notice period.

**Section 102.606 Second Notice of Proposed Regulations**

a) Except when otherwise directed by applicable law, the Board will give second notice of its proposed adoption, amendment, or repeal of regulations to JCAR. The second notice period will begin on the date written notice is received by JCAR, and will expire 45 days after that date, except as provided by Section 5-40 of the IAPA [5 ILCS 100/5-40]. The Board will accept comments only from JCAR during the second notice period.

b) After the beginning of the second notice period, no substantive changes will be made to the proposed regulation, except in response to objections or suggestions from JCAR. Those changes will be made pursuant to Section 102.600 of this Part.

**Section 102.608 Notice of Board Final Action**

The Board will give notice of its final action on a proposal to the proponent, the Agency, DNR, the Attorney General, and all persons on the notice list. The Board will publish notice of its final action in the Environmental Register and on its Web site, and will enter a written opinion stating the reasons in support of its final action.

**Section 102.610 Adoption of Identical-in-Substance Regulation**

- a) Prior to adopting identical-in-substance regulations, the Board will:
- 1) Make available to the public a proposed opinion and order containing the text of the rules at the Board's Chicago Office and on the Board's Web site;
  - 2) Publish the proposed regulations in the Illinois Register;
  - 3) Serve a copy of the proposed opinion and order on USEPA; and
  - 4) Solicit comments from USEPA, the Agency, the Attorney General and the public for at least 45 days after the date of publication in the Illinois Register.

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- b) After consideration of comments from USEPA, the Agency, the Attorney General and the public, the Board will adopt the verbatim text of such USEPA regulations as are necessary and appropriate for authorization of the program. As provided in Section 7.2 of the Act, the Board may also make changes that are necessary for compliance with the Illinois Administrative Code, and technical changes that in no way change the scope or meaning of any portion of the regulations [415 ILCS 5/7.2(a)]. Also, wherever appropriate, the Board regulations will reflect any consistent, more stringent regulations adopted pursuant to the rulemaking requirements of Title VII of the Act and Section 5-35 of the Illinois Administrative Procedure Act [415 ILCS 5/7.2(a)(6)].
- c) As provided by Sections 13(c), 13.3, 17.5, 22.4(a), 22.4(d), and 22.7(d) of the Act, the provisions of Title VII of the Act and Section 5-35 of the IAPA [5 ILCS 100/5-35] will not apply to identical-in-substance rulemakings.

**Section 102.612 Adoption of Emergency Regulations**

- a) When the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety, or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5-45 of the IAPA [415 ILCS 27(c)].
- b) When the Board finds that a severe public health emergency exists, the Board may, in relation to any proposed regulation, order that such regulation shall take effect without delay [415 ILCS 5/27(c)]. The Board will proceed with any required hearings while the regulation continues in effect.

**Section 102.614 Adoption of Peremptory Regulations**

- a) When the Board finds that a peremptory rulemaking is necessary pursuant to Section 5-50 of the IAPA, and states in writing its reasons for that finding, the Board will adopt that peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 5-70 of the IAPA.
- b) Notice of the peremptory rulemaking will be published in the Illinois Register in accordance with Section 5-50 of the IAPA.

**SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL****Section 102.700 Filing of Motions for Reconsideration**

Motions for reconsideration or modification of any Board order taking substantive action on a regulatory proposal must be filed in accordance with 35 Ill. Adm. Code 101.902. The contents of such motions are governed by 35 Ill. Adm. Code 101.Subpart I.

**Section 102.702 Disposition of Motions for Reconsideration**



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An adopted rule becomes effective upon the filing of that rule with the Secretary of State. Therefore, the Board is precluded from allowing a motion for reconsideration of a final order adopting a rule, if that rule has been filed with the Secretary of State.

**Section 102.704 Correction of Publication Errors**

The Board may make technical corrections to proposed or adopted rules, published in the Illinois Register or filed with the Secretary of State, only in accordance with 1 Ill. Adm. Code 100.240. No hearing need be held on such corrections.

**Section 102.706 Appeal**

Any final Board order may be appealed to the appellate court within 35 days after the service of that order, pursuant to Sections 29 and 41 of the Act [415 ILCS 5/29 and 41].

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**Section 102.APPENDIX A Comparison of Former and Current Rules**

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

FORMER PART 102	CURRENT SECTION
102.100	102.100
102.101	102.104
102.102	102.106
102.103	102.110
102.104	102.112
102.120	102.200
102.121	102.202
102.122	102.212
102.123	102.204
102.124	102.206
102.140	102.208
102.141	102.210
102.142	102.212
102.160	102.410
102.161	102.412
102.162	102.416
102.163	102.206
102.164	102.418
102.180	102.414
102.200	102.500
102.201	102.502
102.202	102.504
102.220	102.420
102.221	102.422
102.240	102.404
102.241	102.406
102.242	102.408
102.260	102.402
102.261	102.402
102.262	102.402
102.280	102.424
102.281	102.418
102.282	102.426
102.283	102.428
102.284	102.430
102.285	102.418
102.320	102.108
102.341	102.602
102.342	102.604
102.343	102.606
102.344	102.608



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102.345  
102.346  
102.347  
102.360  
102.361  
102.362  
102.363

102.610  
102.612  
102.614  
102.700  
102.702  
102.704  
102.706

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1) Heading of the Part: Regulatory Relief Mechanisms

2) Code Citation: 35 Ill. Adm. Code 104

3) Section Numbers:

Adopted Action:

104.100 New Section  
104.102 New Section  
104.104 New Section  
104.200 New Section  
104.202 New Section  
104.204 New Section  
104.206 New Section  
104.208 New Section  
104.210 New Section  
104.212 New Section  
104.214 New Section  
104.216 New Section  
104.218 New Section  
104.220 New Section  
104.222 New Section  
104.224 New Section  
104.226 New Section  
104.228 New Section  
104.230 New Section  
104.232 New Section  
104.234 New Section  
104.236 New Section  
104.238 New Section  
104.240 New Section  
104.242 New Section  
104.244 New Section  
104.246 New Section  
104.248 New Section  
104.300 New Section  
104.302 New Section  
104.304 New Section  
104.306 New Section  
104.308 New Section  
104.310 New Section  
104.400 New Section  
104.402 New Section  
104.404 New Section  
104.406 New Section  
104.408 New Section  
104.410 New Section  
104.412 New Section  
104.414 New Section  
104.416 New Section

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104.418	New Section
104.420	New Section
104.422	New Section
104.424	New Section
104.426	New Section
104.428	New Section
APPENDIX A	New Section

- 4) Statutory Authority: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, 35, 36, 37, 38 and 39.5 of the Environmental Protection Act (Act) [415 ILCS 5/5,14.2(c), 22.4, 27, 28, 28.1, 28.5, 35, 36, 37, 38 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

- 5) Effective Date of Rules: January 1, 2001

- 6) Does this rulemaking contain an automatic repeal date? No

- 7) Do these rules contain incorporations by reference? No

- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Board's Chicago office and is available for public inspection.

- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5563

- 10) Has JCAR issued a Statement of Objection to these rules? No

- 11) Differences between proposal and final version: In addition to technical changes and clarifications to this Part, the Board amends Section 104.214(a) to require the Agency to publish notice of a variance petition within 14 days after the petition is filed with the Board, rather than within 14 days after the Agency receives the petition. The Board modifies Section 104.226(a) to clarify that an amended petition recommences the decision period only when the amendment is substantive. The Board also deletes the language from Section 104.234(e) stating that the Board will hold a hearing if a variance would require an amendment to the State Implementation Plan for a criteria pollutant under the Clean Air Act.

In Section 104.240, the Board clarifies that a variance is not binding on the petitioner until an executed certificate of acceptance is filed with the Board and served on the Agency. In addition, the Board deletes Section 104.250 on revoking variances. The Board finds it unnecessary and potentially misleading to single out variances to articulate the circumstances under which the Board may revoke or vacate one of its orders.

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Lastly, the Board deletes language in Section 104.404(b) requiring the Agency to provide written notice of the Agency's response to a request to join as co-petitioner in an adjusted standard proceeding and to include, as applicable, the Agency's basis for declining to join.

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes

- 13) Will these rules replace emergency rules currently in effect? No

- 14) Are there any amendments pending on this Part? No

- 15) Summary and Purpose of Rules: Part 104 addresses the three core adjudicatory proceedings for obtaining relief from generally applicable regulations: variances, provisional variances, and adjusted standards.

The rules now require that the petitioner file the petition to extend the variance no later than 120 days before the variance expires, unless the petitioner demonstrates that it filed as soon as practicable after learning that it could not meet the compliance timeframe under the existing variance. Requests to extend variances proceed as new cases.

In Section 104.214(a), the Board extends from 10 to 14 days the amount of time that the Agency has to publish notice of a variance petition after the petition is filed. In Section 104.216(b), the Board changes the deadline for the Agency to file its recommendation on the variance petition from the current 30 days after the petition is filed to the following: unless the Board or hearing officer orders otherwise, the Agency must file its recommendation within 45 days after the petition is filed, or if a hearing has been scheduled, at least 30 days before hearing, whichever is earlier. The Board also extends from 7 to 14 days the amount of time that a petitioner has to respond to the Agency's recommendation. See Section 104.220.

A variance and its conditions are not binding until the petitioner files the executed certificate with the Board and serves it on the Agency. If the petitioner fails to timely file and serve the executed certificate, the variance is void. Executing the certificate is not a prerequisite to moving the Board to reconsider its decision or appealing the Board's decision.

A more detailed discussion of these proposed rules is contained in the Board's opinion and order in R00-20, which the Board adopted on December 21, 2000. The opinion and order are available from the Board's Chicago office and on the Board's Web site.

- 16) Information and questions regarding these adopted rules shall be directed to:

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Carol Sudman  
Pollution Control Board  
600 S. Second St., Ste. 402  
Springfield, Illinois 62701  
(217) 524-8509

The opinion and order for this rule (R00-20) are available on the Board's  
Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). For copies please contact:

Dorothy Gunn, Clerk  
Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601  
(312) 814-3620

The full text of the adopted rules begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

## PART 104

## REGULATORY RELIEF MECHANISMS

## SUBPART A: GENERAL PROVISIONS

Section	Applicability
104.100	Severability
104.102	Definitions
104.104	

## SUBPART B: VARIANCES

Section	General
104.200	Filing Requirements
104.202	Petition Content Requirements
104.204	Resource Conservation and Recovery Act (RCRA) Variance Petition
104.206	Contents
104.208	Consistency with Federal Law
104.210	Petition for Extension of Variance
104.212	Motion for Modification of Internal Variance Compliance Dates
104.214	Agency's Notice of Petition
104.216	Agency Investigation and Recommendation
104.218	Agency Recommendation to RCRA Variance
104.220	Response to Agency Recommendation
104.222	Stipulations
104.224	Objections to Petition, Written Comments and Request for Hearing
104.226	Amended Petition and Amended Recommendation
104.228	Insufficient Petition
104.230	Dismissal of Petition
104.232	Calculation of Decision Deadline
104.234	Hearing
104.236	Hearing Procedures
104.238	Standard of Review
104.240	Certificate of Acceptance
104.242	Term of Variance
104.244	Variance Conditions
104.246	Performance Bonds
104.248	Objection to Conditions

## SUBPART C: PROVISIONAL VARIANCES

Section	Applicability
104.300	

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provide relief from environmental regulations under certain circumstances as set forth in Titles VII and IX of the Act. Specifically, this Part applies to regulatory relief mechanisms, meaning variances, provisional variances and adjusted standards.

b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

Section 104.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, the adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 104.104 Definitions

For the purpose of this Part, words and terms will have the meanings as defined in 35 Ill. Adm. Code 101. Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

SUBPART B: VARIANCES

Section 104.200 General

- a) Description:
- 1) General Variance. A variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board, which may be granted by the Board with or without conditions for a period of time not to exceed five years, upon presentation of adequate proof, by the petitioner that compliance with any rule, regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship [415 ILCS 5/35(a)].
  - 2) Resource Conservation and Recovery Act (RCRA) Variance. A RCRA variance is an exemption from 35 Ill. Adm. Code 703, 720, 721, 722, 723, 724 or 725 or which allows the Illinois Environmental Protection Agency (Agency) to issue or modify any provision of a RCRA permit required pursuant to Section 21(f) of the Act.
- b) Effect of Filing:
- 1) The filing of a petition for a variance does not stay enforcement of a regulation except as provided in subsection (b)(2) of this Section.
  - 2) If any person files a petition for variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any rule or regulation

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- 104.302 Board Action
- 104.304 Initiating a Request
- 104.306 Notice
- 104.308 Term
- 104.310 Simultaneous Variance Prohibition

SUBPART D: ADJUSTED STANDARDS

- Section
- 104.400 General
- 104.402 Initiation of Proceeding
- 104.404 Request to Agency to Join as Co-Petitioner
- 104.406 Petition Content Requirements
- 104.408 Petition Notice Requirements
- 104.410 Proof of Petition Notice Requirements
- 104.412 Effect of Filing a Petition: Stay
- 104.414 Dismissal of Petition
- 104.416 Agency Recommendation and Petitioner Response
- 104.418 Amended Petition, Amended Recommendation, and Amended Response
- 104.420 Request for Public Hearing
- 104.422 Public Hearing
- 104.424 Hearing Notice
- 104.426 Burden of Proof
- 104.428 Board Action

APPENDIX A Comparison of Former and Current Rules

AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37 and 38] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 813, effective 1/1/01.

SUBPART A: GENERAL PROVISIONS

Section 104.100 Applicability

- a) This Part applies to adjudicatory proceedings before the Board that

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*adopted by the Board which implements, in whole or in part, a State RCRA, Underground Injection Control (UIC), or National Pollutant Discharge Elimination System (NPDES) program shall not be stayed. The Board may hold a hearing upon said petition 5 days from the date of notice of such hearing or thereafter. [415 ILCS 5/38(b)]*

**Section 104.202 Filing Requirements**

- a) Who May File. Any person seeking a variance from any rule or regulation, requirement or order of the Board that would otherwise be applicable to that person may file a variance petition.
- b) General Filing and Service Requirements. All general filing and service requirements for Board filings, including the form of filing and the fee requirements for filing, apply to the filing of a petition for variance. These general requirements are found at 35 Ill. Adm. Code 101-Subpart C.
- c) Special Filing and Service Requirements. In addition to the general requirements found at 35 Ill. Adm. Code 101-Subpart C, a person filing a petition for variance must meet the following requirements:
  - 1) One copy of the petition and all related documents must be served on the Agency. The service on the Agency must be initiated on or before the date the petition is filed with the Board. Additionally, all RCRA variance petitions must be served on the United States Environmental Protection Agency (USEPA) Region V Director of Waste Management. An affidavit of service of the petition and related documents must accompany the filing with the Board; and
  - 2) The petition must contain all information or documents necessary to satisfy the petition content requirements found in Sections 104.204, 104.206, and 104.208 of this Part.

**Section 104.204 Petition Content Requirements**

The petition must include the information required by subsections (a) through (n) of this Section. Additionally, there are specific content requirements set forth at Section 104.206 of this Part for RCRA variance petitions. If the petitioner believes that any of these requirements are not applicable to the specific variance requested, the petitioner must so state and explain the reasoning.

- a) A statement describing the regulation, requirement, or order of the Board from which a variance is sought. If variance from a regulation is sought, the statement must include the Illinois Administrative Code citation to the regulation as well as the effective date of that regulation. If variance from a requirement or order of the Board is sought, the statement must include the citation to that requirement or order of the Board promulgating that requirement, including docket number;

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- b) A complete and concise description of the nature of petitioner's activity that is the subject of the proposed variance, including:
  - 1) The location of, and area affected by, the petitioner's activity;
  - 2) The location of points of discharge, and, as applicable, the identification of the receiving waterway or land, or, if known, the location of the nearest air monitoring station maintained by the Agency;
- 3) An identification, including docket number, of any prior variance issued to the petitioner and, if known, the petitioner's predecessors, concerning similar relief;
- 4) An identification, including number, of the environmental permits held by petitioner for the activity which may be affected by grant of variance;
- 5) The number of persons employed by the petitioner's facility at issue and the age of that facility;
- 6) The nature and amount of the materials used in the process or activity for which the variance is sought and a full description of the particular process or activity in which the materials are used;
- 7) A description of the relevant pollution control equipment already in use; and
- 8) The nature and amount of emissions, discharges or releases of the constituent in question currently generated by the petitioner's activity;
- c) Data describing the nature and extent of the present or anticipated failure to meet the regulation, requirement, or order of the Board from which variance is sought and facts that support petitioner's argument that compliance with the regulation, requirement, or order of the Board was not or cannot be achieved by any required compliance date;
- d) A description of the efforts that would be necessary for the petitioner to achieve immediate compliance with the regulation, requirement, or Board order at issue. All possible compliance alternatives, with the corresponding costs for each alternative, must be set forth and discussed. The discussion of compliance alternatives must include the availability of alternate methods of compliance, the extent that the methods were studied, and the comparative factors leading to the selection of the control program proposed for compliance. The discussion of the costs of immediate compliance may include the overall capital costs and the annualized capital and operating costs;
- e) Facts that set forth the reasons the petitioner believes that immediate compliance with the regulation, requirement, or order of the Board would impose an arbitrary or unreasonable hardship;
- f) A detailed description of the compliance plan, including:
  - 1) A discussion of the proposed equipment or proposed method of control to be undertaken to achieve full compliance with the regulation, requirement, or order of the Board;



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- 2) A time schedule for the implementation of all phases of the control program from initiation of design to program completion; and
- 3) The estimated costs involved for each phase and the total cost to achieve compliance;
- g) A description of the environmental impact of the petitioner's activity including:
  - 1) The nature and amount of emissions, discharges, or releases of the constituent in question if the requested variance is granted, compared to that which would result if immediate compliance is required;
  - 2) The qualitative and quantitative description of the impact of petitioner's activity on human health and the environment if the requested variance is granted, compared to the impact of petitioner's activity if immediate compliance is required. Cross-media impacts, if any, must be discussed; and
  - 3) A statement of the measures to be undertaken during the period of the variance to minimize the impact of the discharge of contaminants on human, plant, and animal life in the affected area, including the numerical interim discharge limitations that can be achieved during the period of the variance;
- h) Citation to supporting documents or legal authorities whenever they are used as a basis for the petition. Relevant portions of the documents and legal authorities other than Board decisions, reported state and federal court decisions, or state and federal regulations and statutes must be appended to the petition;
- i) If the requested variance involves an existing permit or a pending permit application, a copy of the material portion of the permit or permit application must be appended to the petition;
- j) Any conditions petitioner suggests for the requested variance;
- k) A proposed beginning and ending date for the variance. If the petitioner requests that the term of the variance begin on any date other than the date on which the Board takes final action on the petition, a detailed explanation and justification for the alternative beginning date;
- l) A discussion of consistency with federal law, including an analysis of applicable federal law and facts that may be necessary to show compliance with federal law as set forth in Section 104.208 of this Part;
- m) An affidavit verifying any facts submitted in the petition; and
- n) A statement requesting or denying that a hearing should be held in this matter.

#### Section 104.206 Resource Conservation and Recovery Act (RCRA) Variance Petition Contents

In addition to the requirements of Sections 104.204 and 104.208 of this Part, a petition for a RCRA variance must meet the following requirements:

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- a) All petitions for RCRA variances must include a showing that the Board can grant the requested relief consistent with, and establish RCRA permit conditions no less stringent than, those that would be required by RCRA and the regulations thereunder promulgated by USEPA (40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270). Petitions must indicate whether any federal provisions authorize the relief requested, and must include any facts necessary to show that the petitioner would be entitled to the requested relief pursuant to federal law;
- b) Persons who have, or are required to have, a RCRA permit and who seek a RCRA variance that could result in modification or issuance of the RCRA permit must have on file with the Agency a RCRA permit application reflecting the requested variance prior to filing the variance petition;
- c) Petitioner must attach to the variance petition a copy of the RCRA permit application, or such portion as may be relevant to the variance request; and
- d) Petitioner must attach to the variance petition proof of service on USEPA as required by Section 104.202 of this Part.

#### Section 104.208 Consistency with Federal Law

- a) All petitions for variances from Title II of the Act or from 35 Ill. Adm. Code.Subtitle B, Ch. I "Air Pollution", must indicate whether the Board may grant the requested relief consistent with the Clean Air Act (CAA) (42 USC 7401 et seq.) and the federal regulations adopted pursuant thereto. If granting a variance would require revision of the State Implementation Plan, the petition must indicate whether the requirements of Section 110(a) of the CAA (42 USC 7410(a)) and 40 CFR 51 will be satisfied.
- b) All petitions for variances from Title III of the Act, from 35 Ill. Adm. Code.Subtitle C, Ch. I "Water Pollution", or from water pollution related requirements of any other Title of the Act or Chapter of the Board's regulations, must indicate whether the Board may grant the relief consistent with the Clean Water Act (CWA) (33 USC 1251 et seq.), USEPA effluent guidelines and standards, any other federal regulations, or any area-wide waste treatment management plan approved by the Administrator of USEPA pursuant to Section 208 of the CWA (33 USC 1288).
- c) All petitions for variances from Title IV of the Act or from 35 Ill. Adm. Code.Subtitle F, Ch. I "Public Water Supplies", and to the extent applicable, from Title V of the Act or from 35 Ill. Adm. Code.Subtitle D, Ch. I "Mine Related Water Pollution", must indicate whether the Board may grant the relief consistent with the Safe Drinking Water Act (42 USC 300(f) et seq.), the federal National Primary Drinking Water Regulations (40 CFR 141) and Underground Injection Control Program and other federal regulations adopted pursuant thereto.
- d) All petitions for variances from Title V of the Act or from 35 Ill.

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Adm. Code.Subtitle G, Ch. I "Waste Disposal" must indicate whether the Board may grant the requested relief consistent with RCRA, and the federal regulations adopted pursuant thereto.

- e) For all petitions for RCRA variances, petitioner should consult the federal RCRA rules which contain procedures that are referred to as "variances" (40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270). The petitioner should consult the comparable Board regulations to decide whether the variance procedures of this Part need to be followed.

**Section 104.210 Petition for Extension of Variance**

- a) A variance extension pursuant to Section 36(b) of the Act may be extended from year to year by affirmative action of the Board, but only if satisfactory progress has been shown by the petitioner [415 ILCS 5/36(b)].
- b) A petition to extend a variance granted by the Board is a new petition for variance before the Board, and must be filed in accordance with this Subpart and 35 Ill. Adm. Code 101.Subpart C, including payment of the filing fee pursuant to Section 104.202(b) of this Part and 35 Ill. Adm. Code 101.302(e)(2).
- c) If the petitioner desires to have the term of the variance extension be sequential with the term of the prior variance, the petition to extend the variance must be filed with the Board no later than 120 days prior to the termination of the variance, unless the petitioner can demonstrate that the petition for variance extension was filed as soon as practicable after the petitioner learned that it could not meet the compliance time frame under the existing variance.
- d) In addition to the requirements of this Subpart, the petition for extension of variance must contain:
- 1) A detailed statement showing that satisfactory progress toward compliance has been or will have been achieved during the term of the prior variance [415 ILCS 5/36(b)];
  - 2) A statement that the conditions of the prior variance have been fully met, or, if any condition or conditions have not been fully met, a detailed explanation of the reason or reasons that the condition or conditions have not been fully met; and
  - 3) A motion to incorporate any material from the record of the prior variance proceeding in accordance with 35 Ill. Adm. Code 101.306.

**Section 104.212 Motion for Modification of Internal Variance Compliance Dates**

- a) The petitioner may request, by written motion, modification of internal dates within a compliance schedule of an existing variance, so long as the modification does not extend the length of the existing variance period. The written motion will not be considered to be an extension of the prior variance. The motion must be filed under the docket number of the existing variance, and must be filed with the

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Clerk and served upon the Agency, and any joined parties pursuant to 35 Ill. Adm. Code 101.Subpart D. The Agency must, and any joined parties may, file a response to that motion. Any response must be filed within 14 days after receipt of the motion.

- b) A motion for modification that would extend the length of the existing variance period constitutes a Petition for Extension of Variance and must be filed in accordance with Section 104.210 of this Part.

**Section 104.214 Agency's Notice of Petition**

- a) Within 14 days after the petition is filed, the Agency must publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located [415 ILCS 5/37(a)].
- b) Upon receipt of a petition for variance, the Agency shall promptly give written notice of such petition to:
- 1) Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions;
  - 2) the State's attorney of such county;
  - 3) The Chairman of the County Board of such county; and
  - 4) Each member of the General Assembly from the legislative district in which that installation or property is located. [415 ILCS 5/37(a)]
- c) Upon receipt of a petition for RCRA variance, the Agency must promptly give notice of the petition to:
- 1) Federal agencies as designated by USEPA;
  - 2) Illinois Department of Transportation;
  - 3) Department of Natural Resources;
  - 4) Illinois Department of Public Health;
  - 5) The Governor of any other state adjacent to the county in which the facility or pollution source is located; and
  - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility or pollution source.
- d) In addition to the methods of notice stated in subsection (c) of this Section, in a RCRA variance the Agency must also give notice by broadcast over at least one local radio station in the area of the facility or pollution source containing the information required by subsections (e) and (f) of this Section.
- e) All notices required by this Section must include the following:
- 1) The street address of the facility or pollution source, and if there is no street address, then the legal description or the location with reference to any well known landmark, highway, road, thoroughfare or intersection;
  - 2) A description of the requested relief;

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- 3) An indication that any person may request a hearing by filing with the Board a written objection to the grant of the variance within 21 days after the publication of the Agency's notice, together with a written request for hearing;
  - 4) The Clerk of the Board's address and phone number and a statement that a copy of the variance may be obtained through the Clerk's Office;
  - 5) A statement that the Agency is preparing a recommendation, the date on which the recommendation is to be filed, and the name, address and telephone number of the Agency employee responsible for the recommendation;
  - 6) A statement that a hearing may be held after the filing of the recommendation and that the record will remain open for written comments for 45 days after filing of the recommendation. The notice will include the address of the Board to which the comments must be mailed;
  - 7) A statement that the record in the variance proceeding is available at the Board office for inspection, except those portions that are protected from disclosure under 35 Ill. Adm. Code 130, and that procedures are available whereby disclosure may be sought by the public;
  - 8) A statement that variances may be granted pursuant to Section 35 of the Act [415 ILCS 5/35] and 35 Ill. Adm. Code 104, and a reference to the Board regulations or order from which a variance is sought; and
  - 9) Any additional information considered necessary or proper.
- f) Within 21 days after the publication of notice, the Agency must file with the Board a certification of publication that states the date on which the notice was published and must attach a copy of the published notice.

**Section 104.216 Agency Investigation and Recommendation**

- a) Upon receipt of a petition for variance, the Agency shall promptly investigate such petition and consider the views of persons who might be adversely affected by the grant of a variance [415 ILCS 5/37(a)].
- b) The Agency shall make a recommendation to the Board as to the disposition of the petition [415 ILCS 5/37(a)]. Unless otherwise ordered by the hearing officer or the Board, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition, or where there has been a hearing scheduled, at least 30 days before hearing, whichever is earlier. The Agency must serve a copy of its recommendation by First Class mail on the petitioner, joined parties, and assigned hearing officer, if applicable. At a minimum, the recommendation must include:
  - 1) A description of the efforts made by the Agency to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained;

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- 2) The location of the nearest air monitoring station maintained by the Agency where applicable;
- 3) A statement of the degree to which, if at all, the Agency disagrees with the facts as alleged in the petition, including facts refuting any allegations in the petition for variance;
- 4) Allegations of any other facts the Agency believes relevant to the disposition of the petition, including any past or pending enforcement actions against petitioner;
- 5) The Agency's estimate of the costs that compliance would impose on the petitioner and on others;
- 6) The Agency's estimate of the injury that the grant of the variance would impose on the public, including the effect that continued discharge of contaminants will have upon the environment;
- 7) The Agency's analysis of applicable federal laws and regulations and an opinion concerning the consistency of the petition with such federal laws and regulations;
- 8) The status of any permits or pending permit applications that are associated with or affected by the requested variance;
- 9) Allegation of any facts that the Agency believes are relevant to whether the Board should condition a grant of variance on the posting of a performance bond pursuant to Section 104.246 of this Part;
- 10) Citation to supporting documents or legal authorities whenever such are used as a basis for the Agency's recommendation. Relevant portions of the documents and legal authorities, other than Board decisions, reported state and federal court decisions, state and federal regulations and statutes, must be appended to the recommendation if not already in the record of the proceeding;
- 11) The Agency's recommendation of what disposition should be made of the petition, deny or grant, and suggested conditions. If the Agency recommends that variance be granted, a recommended beginning and end date of the requested variance, and any recommended conditions on the variance; and
- 12) An affidavit verifying any facts outside the record referenced in the recommendation.

**Section 104.218 Agency Recommendation to RCRA Variance**

In addition to the recommendation requirements stated in Section 104.216 of this Part, the Agency recommendation on petitions for RCRA variances must also include the following and, in addition to the service requirements of Section 104.216 of this Part, the Agency must serve its recommendation on USEPA and all persons who have notified the Agency that they intend to comment or have otherwise asked to be served a copy of the recommendation.

- a) The recommendation must include a fact sheet or statement of basis as provided in 35 Ill. Adm. Code 705.141 through 705.143, where relevant.

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- b) If the Agency recommends that the variance be granted, a partial draft permit reflecting the variance and recommended conditions must be included with the recommendation.

**Section 104.220 Response to Agency Recommendation**

- a) Within 14 days after service of the Agency recommendation the petitioner may file a response to the Agency recommendation or an amended petition. The petitioner must serve a copy of the response or amended petition upon the hearing officer, the Agency, and any other parties to the proceeding.
- b) The response or amended petition may include a request for hearing. New information in a response or amended petition must be verified by oath or affidavit.
- c) Any amended petition or request for hearing under this Section recommences the decision period pursuant to Section 104.232 of this Subpart.

**Section 104.222 Stipulations**

Filing of a stipulation in a variance proceeding is permissible to the extent that the stipulation conveys to the Board those facts upon which the parties agree. However, the Board is not bound to accept as fact any stipulation to findings of ultimate fact or conclusion of law, such as stipulating that it would impose an arbitrary or unreasonable hardship if petitioner were to immediately comply with the applicable rule or regulation.

**Section 104.224 Objections to Petition, Written Comments and Request for Hearing**

- a) A person who files an objection, request for hearing, or comment is a "participant" as defined in 35 Ill. Adm. Code 101.Subpart B.
- b) Except as provided in subsection (e) of this Section for RCRA variances, any person may file with the Clerk, within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part, a written objection to the grant of variance. The Clerk will mail a copy of the objection to the petitioner, the Agency, the hearing officer, and any joined parties by First Class mail.
- c) Any person may also file a written request for hearing. The written request must be filed within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part in order for a hearing to be held in accordance with Section 104.236 of this Part and 35 Ill. Adm. Code 101.Subpart F.
- d) Any person may file written comments in a variance proceeding. If a hearing is held, public comments must be filed within 14 days after the close of the hearing unless the hearing officer specifies a different date. If there is no hearing, comments must be filed no later than 30 days before the decision date, unless the hearing

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- officer orders otherwise to prevent material prejudice. (See 35 Ill. Adm. Code 101.628(c)(1).)
- e) In RCRA variances, subsections (b) and (c) of this Section do not apply. However, persons may file written comments within 45 days after the Agency files its recommendation.

**Section 104.226 Amended Petition and Amended Recommendation**

- a) The petitioner may amend the petition prior to the close of the hearing, if a hearing is held, or prior to the Board's decision, if a hearing is not held, by filing a motion pursuant to 35 Ill. Adm. Code 101.Subpart E. Amended petitions subsequent to hearing will be accepted only with leave of the Board. Amended petitions must be in writing and filed with the Board and served in accordance with 35 Ill. Adm. Code 101.Subpart C. If the petitioner substantively amends the petition, the filing of the amended petition recommences the decision period, pursuant to Section 104.232 of this Part.
- b) If the petitioner amends the petition, the Agency must file or give an amended recommendation in writing or orally at hearing, but in any event not later than 45 days after the filing of an amended petition. The Agency may amend its recommendation even if the petitioner has not amended its petition. In such an instance, a recommendation may be amended prior to close of the hearing, if a hearing is held, or 40 days prior to the Board's decision date if a hearing is not held. The petitioner may file a response to an Agency recommendation pursuant to Section 104.220 of this Part.
- c) Written amendments to the petition or recommendation need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

**Section 104.228 Insufficient Petition**

If the Board finds the petition fails to contain information as required by Sections 104.204, 104.206, and 104.208 of this Part, the Board may order the petitioner to supplement the information contained in the petition. Filings made in response to the order constitute an amended petition for the purposes of calculating the decision deadline pursuant to Section 104.232 of this Part. Alternatively, pursuant to Section 104.230 of this Part, the Board may dismiss the petition for lack of sufficient information. Failure of the Board to require supplemental information does not preclude a later finding that the information provided is insufficient to support grant of variance, or constitute a Board decision on the merits of the petition.

**Section 104.230 Dismissal of Petition**

A petition is subject to dismissal if the Board determines that:

- a) The petition requests relief that the Board is not empowered to grant;

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- b) The petition fails to comply with the requirements of 35 Ill. Adm. Code 101.Subpart C and Sections 104.202, 104.204, 104.206 and 104.208 of this Part;
- c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information pursuant to Section 104.228 of this Part; or
- d) The petitioner is not subject to the rule or regulation, requirement, or order of the Board at issue.

**Section 104.232 Calculation of Decision Deadline**

- a) Pursuant to Section 38(a) of the Act the Board will render its final decision on the petition within 120 days after the date of filing of the petition, except:

- 1) When the petitioner waives its right to a decision within the prescribed decision period in accordance with 35 Ill. Adm. Code 101.Subpart C;
  - 2) When the petitioner files an amended petition for variance pursuant to this Subpart or files a request for hearing after filing the original petition, the decision period recommences from the date of filing of the amended petition or the request for hearing; or
  - 3) When a hearing is canceled pursuant to 35 Ill. Adm. Code 101.510.
- b) Time will be computed in accordance with 35 Ill. Adm. Code 101.Subpart C.

**Section 104.234 Hearing**

The Board will order a hearing on a variance petition if:

- a) A hearing is requested by the petitioner at the time of initial filing on the associated form or in writing, which is filed and served in accordance with 35 Ill. Adm. Code 101.Subpart C;
- b) A hearing is requested in a response or amended petition;
- c) The Board, in its discretion, concludes that a hearing would be advisable [415 ILCS 5/37(a)];
- d) The Agency or any other person files a written objection to the grant of such variance within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part, together with a written request for hearing [415 ILCS 5/37(a)];
- e) The request concerns a RCRA variance.

**Section 104.236 Hearing Procedures**

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, except that:

- a) All hearings are to be held in the county where the petitioner's facility or pollution source is located unless otherwise ordered by the hearing officer (see 35 Ill. Adm. Code 101.600);

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- b) Hearings may be canceled pursuant to a motion filed in accordance with 35 Ill. Adm. Code 101.510 at the discretion of the hearing officer; and
- c) If all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.
- d) The hearing officer shall give notice of RCRA hearings to the following persons:
- 1) Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions and the State's attorney of the county;
  - 2) The Chairman of the county board of the county;
  - 3) Each member of the General Assembly from the legislative district in which that installation or property is located;
  - 4) Federal agencies as designated by USEPA;
  - 5) Illinois Department of Transportation;
  - 6) Department of Natural Resources;
  - 7) Illinois Department of Public Health;
  - 8) The Governor or any other state adjacent to the county in which the facility or pollution source is located;
  - 9) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility or pollution source; and
  - 10) USEPA's Region V Director of Waste, Pesticides and Toxics Division.

**Section 104.238 Standard of Review**

- a) The Board may grant individual variances beyond the limitations prescribed by the Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. [415 ILCS 5/35(a)] The burden of proof in a variance proceeding is on the petitioner.
- b) In addition to subsection (a) of this Section the Board may grant a RCRA variance only to the extent consistent with, and with conditions no less stringent than, those that would be required by RCRA and 40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268, and 270. Variances must require compliance with the regulations in the shortest practicable time.

**Section 104.240 Certificate of Acceptance**

The Board's order granting a variance will include a certificate of acceptance.



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The certificate constitutes acceptance of the variance and its conditions by the petitioner. A variance and its conditions are not binding upon the petitioner until the executed certificate is filed with the Board and served on the Agency. Failure to timely file the executed certificate with the Board and serve the Agency renders the variance void. However, execution of the certificate is not necessary prior to seeking reconsideration pursuant to 35 Ill. Adm. Code 101.Subpart I, or appeal pursuant to Section 104.244 of this Part.

**Section 104.242 Term of Variance**

Except as provided by Section 38(a) of the Act, any variance granted pursuant to the provisions of this Part shall be for such period of time, not exceeding five years, as shall be specified by the Board at the time of the grant of such variance, and upon the condition that the person who receives such variance shall make such periodic progress reports as the Board shall specify. Such variance may be extended from year to year by affirmative action of the Board, but only if satisfactory progress is shown. [415 ILCS 5/36(b)]

**Section 104.244 Variance Conditions**

In granting a variance the Board may impose such conditions as the policies of the Act may require [415 ILCS 5/36(a)]. In a RCRA variance the Board may direct the Agency to issue or modify a RCRA permit with conditions that may be set forth specifically in the order, or that may consist of general guidelines to be followed by the Agency, together with applicable regulations, in issuing a permit.

**Section 104.246 Performance Bonds**

If the hardship complained of consists solely of the need for a reasonable delay in which to correct a violation of the Act or of the Board regulations, the Board shall condition the grant of such variance upon the posting of sufficient performance bond or other security to assure the completion of the work covered by the variance. The original amount of such performance bond shall not exceed the reasonable cost of the work to be completed pursuant to the variance. The obligation under such bond shall at no time exceed the reasonable cost of work remaining pursuant to the variance. [415 ILCS 5/36(a)]

**Section 104.248 Objection to Conditions**

The Board may include such conditions in granting a variance and may adopt such rules and regulations as the policies of the Act may require. If an objection is made to a variance condition, the Board shall reconsider the condition within not more than 75 days from the date of the objection. [415 ILCS 5/41(b)] An objection to a specific variance condition may be made by filing a motion pursuant to 35 Ill. Adm. Code 101.Subpart E within 35 days after the receipt of the Board's opinion and order containing the objectionable

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condition.

**SUBPART C: PROVISIONAL VARIANCES****Section 104.300 Applicability**

This Subpart applies to any person seeking a provisional variance pursuant to Title IX of the Act. This Subpart must be read in conjunction with 35 Ill. Adm. Code 101 and this Part. In the event of conflict between this Subpart and the requirements of 35 Ill. Adm. Code 101, the requirements of this Subpart apply.

**Section 104.302 Board Action**

The Board shall grant provisional variances only upon notification from the Agency that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement would impose an arbitrary or unreasonable hardship. Such provisional variances shall be issued within 2 working days of notification from the Agency. [415 ILCS 5/35(b)]

**Section 104.304 Initiating a Request**

Any person seeking a provisional variance pursuant to Section 104.401 of this Part shall make a request to the Agency. The Agency shall promptly investigate and consider the merits of the request. The Agency may notify the Board of its recommendation. If the Agency fails to take final action within 30 days after receipt of the request, or if the Agency denies the request, the person may initiate a variance proceeding pursuant to Subpart B of this Part. [415 ILCS 5/37(b)]

**Section 104.306 Notice**

The Board shall give prompt notice of its action on provisional variance requests to the public by issuing a press release for distribution to newspapers of general circulation in the county. [415 ILCS 5/37(b)]

**Section 104.308 Term**

Any provisional variance granted by the Board pursuant to subsection (b) of Section 35 shall be for a period of time not to exceed 45 days. Upon receipt of a recommendation from the Agency to extend this time period, the Board shall grant up to an additional 45 days. The provisional variances granted to any one person shall not exceed a total of 90 days during any calendar year. [415 ILCS 5/36(c)]

**Section 104.310 Simultaneous Variance Prohibition**

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The Board will not grant a provisional variance to the extent that the petitioner already holds a variance from the same regulation or Board order for the same time period.

## SUBPART D: ADJUSTED STANDARDS

## Section 104.400 General

- a) Description. An adjusted standard has the effect of an environmental regulation that would apply to petitioner, if granted, in lieu of the general regulation that would otherwise be applicable to a petitioner and the regulated community.
- b) Applicability. This Subpart will apply to any person seeking an adjusted standard pursuant to Section 28.1 of the Act. This includes an adjusted standard sought pursuant to 35 Ill. Adm. Code 212.126 (CAA) and 35 Ill. Adm. Code 700 through 750 (RCRA). This Subpart must be read in conjunction with 35 Ill. Adm. Code Part 101 which contains procedures generally applicable to all adjudicatory proceedings before the Board. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Subpart, the provisions of this Subpart apply.

## Section 104.402 Initiation of Proceeding

A person may initiate an adjusted standard proceeding by filing a petition that meets the requirements of Section 104.406 of this Part. A petition for an adjusted standard (petition) may be filed either jointly with the Agency or singly pursuant to the filing requirements of 35 Ill. Adm. Code 101. If filed singly the petitioner shall also serve the petition upon the Agency in accordance with 35 Ill. Adm. Code 101. Additionally, a person may file a petition and request the Agency to join as a co-petitioner as set forth in Section 104.404 of this Part.

## Section 104.404 Request to Agency to Join as Co-Petitioner

- a) The Agency may, in its discretion, act as a co-petitioner in any adjusted standard proceeding.
- b) Any person may request Agency assistance in initiating a petition for adjusted standard. The Agency may require the person to submit to the Agency any background information in the person's possession relevant to the adjusted standard that is sought.
- c) Discretionary decisions made by the Agency pursuant to this Section are not appealable to the Board.
- d) Subsequent to the filing of the petition and prior to hearing, the Board will grant the Agency co-petitioner status upon joint motion of the Agency and the petitioner who originally filed the petition.

## Section 104.406 Petition Content Requirements

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If the Agency is a co-petitioner, the petition must so state. The petition must contain headings corresponding to the informational requirements of each subsection of this Section. If the petitioner believes that any of the informational requirements are not applicable to the specific adjusted standard requested, the petitioner must so state and explain his reasoning. The following information must be contained in the petition:

- a) A statement describing the standard from which an adjusted standard is sought. This must include the Illinois Administrative Code citation to the regulation of general applicability imposing the standard as well as the effective date of that regulation;
- b) A statement that indicates whether the regulation of general applicability was promulgated to implement, in whole or in part, the requirements of the CWA (33 USC 1251 et seq.), Safe Drinking Water Act (42 USC 300(f) et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 et seq.), CAA (42 USC 7401 et seq.), or the State programs concerning RCRA, UIC, or NPDES (415 ILCS 5/28.1);
- c) The level of justification as well as other information or requirements necessary for an adjusted standard as specified by the regulation of general applicability or a statement that the regulation of general applicability does not specify a level of justification or other requirements (415 ILCS 5/28.1) (See Section 104.426);
- d) A description of the nature of the petitioner's activity that is the subject of the proposed adjusted standard. The description must include the location of, and area affected by, the petitioner's activity. This description must also include the number of persons employed by the petitioner's facility at issue, age of that facility, relevant pollution control equipment already in use, and the qualitative and quantitative description of the nature of emissions, discharges or releases currently generated by the petitioner's activity;
- e) A description of the efforts that would be necessary if the petitioner was to comply with the regulation of general applicability. All compliance alternatives, with the corresponding costs for each alternative, must be discussed. The discussion of costs must include the overall capital costs as well as the annualized capital and operating costs;
- f) A narrative description of the proposed adjusted standard as well as proposed language for a Board order that would impose the standard. Efforts necessary to achieve this proposed standard and the corresponding costs must also be presented;
- g) The quantitative and qualitative description of the impact of the petitioner's activity on the environment if the petitioner were to comply with the regulation of general applicability as compared to the quantitative and qualitative impact on the environment if the petitioner were to comply only with the proposed adjusted standard. To the extent applicable, cross-media impacts must be discussed. Also, the petitioner must compare the qualitative and quantitative

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nature of emissions, discharges or releases that would be expected from compliance with the regulation of general applicability as opposed to that which would be expected from compliance with the proposed adjusted standard;

h) A statement which explains how the petitioner seeks to justify, pursuant to the applicable level of justification, the proposed adjusted standard;

i) A statement with supporting reasons that the Board may grant the proposed adjusted standard consistent with federal law. The petitioner must also inform the Board of all procedural requirements applicable to the Board's decision on the petition that are imposed by federal law and not required by this Subpart. Relevant regulatory and statutory authorities must be cited;

j) A statement requesting or waiving a hearing on the petition (pursuant to Section 104.422(a)(4) of this Part a hearing will be held on all petitions for adjusted standards filed pursuant to 35 Ill. Adm. Code 212.126 (CAA));

k) The petition must cite to supporting documents or legal authorities whenever they are used as a basis for the petitioner's proof. Relevant portions of the documents and legal authorities other than Board decisions, State regulations, statutes, and reported cases must be appended to the petition;

l) Any additional information which may be required in the regulation of general applicability.

## Section 104.408 Petition Notice Requirements

a) The petitioner shall submit to the Board proof that, within 14 days after the filing of the petition, it has published notice of the filing of the petition by advertisement in a newspaper of general circulation in the area likely to be affected by the petitioner's activity that is the subject of the adjusted standard proceeding [415 ILCS 5/28.1].

b) The title of the notice must be in the form as follows: "Notice of petition by [petitioner's name] for an Adjusted Standard before the Illinois Pollution Control Board." The notice must contain the name and address of the petitioner and the statement that the petitioner has filed with the Board a petition for an adjusted standard. The notice must also provide the date upon which the petition was filed, the Board docket number, the regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought, the proposed adjusted standard, and a general description of the petitioner's activity that is the subject of the adjusted standard proceeding, and the location of that activity. This information must be presented so as to be understood in accordance with the context of this Section's requirements. The concluding portion of the notice must read as follows:

"Any person may cause a public hearing to be held in the

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above-described adjusted standard proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should clearly indicate the docket number for the adjusted standard proceeding, as found in this notice, and must be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601."

## Section 104.410 Proof of Petition Notice Requirements

Within 30 days after the filing of the petition, the petitioner must file a certificate of publication, issued by the publisher of the petition notice certifying the publication of that notice. The certificate must be issued in accordance with Section 1 of the Notice by Publication Act [715 ILCS 5/1].

## Section 104.412 Effect of Filing a Petition: Stay

a) If any person files a petition for an individual adjusted standard in lieu of complying with the applicable regulation within 20 days after the effective date of the regulation, the operation of the regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any regulation shall not be stayed if that regulation was adopted by the Board to implement, in whole or in part, the requirements of the Federal Clean Air Act, Safe Drinking Water Act or Comprehensive Environmental Response, Compensation, and Liability Act, or the State RCRA, UIC or NPDES programs. [415 ILCS 5/28.1(e)]

b) Within 20 days after the effective date of any regulation that implements in whole or in part the requirements of the Clean Air Act, if any person files a petition for an individual adjusted standard in lieu of complying with the regulation, such source will be exempt from the regulation until the Board makes a final determination on the petition. If the regulation adopted by the Board from which the individual adjusted standard is sought replaces a previously adopted Board regulation, the source shall be subject to the previously adopted Board regulation until final action is taken by the Board on the petition. [415 ILCS 5/28.1(f)]

## Section 104.414 Dismissal of Petition

The Board may at any time dismiss a petition for any of the following reasons:

- a) The Board determines that the petition is frivolous, duplicative, or deficient with respect to the requirements of Sections 104.406, 104.408, and 104.410 of this Part; or
- b) The Board determines that the petitioner is not pursuing disposition of the petition in a timely manner.

## Section 104.416 Agency Recommendation and Petitioner Response

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- a) Unless otherwise ordered by the hearing officer or the Board, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition, or where a hearing has been scheduled, at least 30 days before hearing, whichever is earlier. The recommendation must set forth the rationale for the Agency's position and may present any information which the Agency believes is relevant to the Board's consideration of the proposed adjusted standard. If the Agency recommends a denial of the petition due to informational deficiencies within the petition, the recommendation must identify the types of information needed to correct the deficiencies.
- b) At a minimum, the Agency must address and respond to the petition with respect to each issue raised by the requirements of subsections (a) through (j) of Section 104.406 of this Part.
- c) The recommendation must cite to supporting documents or legal authorities whenever they are used as a basis for the Agency's conclusion. Relevant portions of the documents and legal authorities other than Board decisions, State regulations, statutes and reported cases must be appended to the recommendation if not already in the record of the proceeding.
- d) The petitioner may file a response to the recommendation within 14 days after the date of service of the recommendation.

**Section 104.418 Amended Petition, Amended Recommendation, and Amended Response**

- a) Amended Petition. The petitioner may amend its petition at any time. The amendment must be in writing and filed with the Board unless made orally at hearing. If the petitioner amends the petition such that the amendment is a substantive change to the requested relief in that it requests additional or alternative relief, petitioner must re-notice the amended petition pursuant to Section 104.408 of this Part.
- b) Amended Recommendation. The Agency may amend its recommendation at any time, even if the petitioner has not amended its petition, if the amendment does not cause material prejudice. The amendment must be in writing and filed with the Board unless made orally at hearing.
- c) Amended Response. The petitioner may file a reply to a written amended recommendation within 14 days after the date of receipt of the amended recommendation or within 14 days after the hearing when the Agency orally amended its recommendation.
- d) Written amendments to the petition or recommendations need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

**Section 104.420 Request for Public Hearing**

- a) Any person can request that a public hearing be held in an adjusted

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standard proceeding. The requests must be filed not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408 of this Part. Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be mailed to the petitioner and Agency by the Clerk of the Board. Participation by the public at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.

- b) Where all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.

**Section 104.422 Public Hearing**

- a) A public hearing will be held and the Board will assign a hearing officer to an adjusted standard proceeding when:
  - 1) The petitioner requests a hearing be held; or
  - 2) The Board receives a hearing request by any person pursuant to Section 104.420 of this Part, not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408 of this Part; or
  - 3) The Board in its discretion determines that a hearing would be advisable [415 ILCS 5/28.1]; or
  - 4) The adjusted standard is sought pursuant to 35 Ill. Adm. Code 212.126 (CAA).
- b) The hearing officer will set a time and place for the hearing. The hearing officer will make an attempt to consult with the petitioner and the Agency prior to the scheduling of a hearing. Hearings are to be held in the county likely to be affected by the petitioner's activity that is the subject of the proposed adjusted standard.

**Section 104.424 Hearing Notice**

After receiving notification from the hearing officer of the scheduled hearing date made pursuant to Section 104.422 of this Part, the Clerk will cause the publication of a hearing in accordance with Section 28.1 of the Act [415 ILCS 5/28.1] and 35 Ill. Adm. Code 101.

**Section 104.426 Burden of Proof**

The burden of proof in an adjusted standard proceeding is on the petitioner. A petitioner must justify an adjusted standard consistent with Section 27(a) of the Act.

- a) *If the regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:*



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- 1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;
  - 2) the existence of those factors justifies an adjusted standard;
  - 3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and
  - 4) the adjusted standard is consistent with any applicable federal law. [415 ILCS 5/28.1(c)]
- b) If the regulation of general applicability specifies a level of justification for an adjusted standard, the Board may adopt the proposed adjusted standard, if the petitioner proves the level of justification specified by the regulation of general applicability.

**Section 104.428 Board Action**

- a) In adopting adjusted standards the Board may impose such conditions as may be necessary to accomplish the purposes of the Act.
- b) Subsequent to the Board's adoption of an adjusted standard, the Board will publish, in the Environmental Register, the name of the petitioner, date of the Order that adopted the adjusted standard, and a brief narrative description of the adopted adjusted standard.
- c) Board orders and opinions shall be maintained for public inspection by the Clerk of the Board and a listing of all determinations made pursuant to Section 28.1 of the Act shall be published in the Illinois Register and the Environmental Register at the end of each fiscal year. [415 ILCS 5/28.1(d)] Board opinions and orders will also be available from the Board's Web site.

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**Section 104.APPENDIX A Comparison of Former and Current Rates**

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

FORMER PART 104	CURRENT SECTION
104.102	104.200
104.104	104.206
104.120	104.202
104.121	104.204
104.122	104.208
104.123	104.210
104.124	104.234
	104.236
104.125	104.228
	104.230
104.126	104.206
104.140	104.214
104.141	104.224
104.142	104.214
104.160	104.228
	104.234
	104.236
	104.232
	104.230
104.180	104.216
104.181	104.220
104.182	104.218
104.183	104.224
104.200	104.236
104.201	104.238
	101.Subpart F
104.221	104.238



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1) Heading of the Part: Tax Certifications2) Code Citation: 35 Ill. Adm. Code 1253) Section Numbers: Adopted Action:

125.100	New Section
125.102	New Section
125.104	New Section
125.200	New Section
125.202	New Section
125.204	New Section
125.206	New Section
125.208	New Section
125.210	New Section
125.212	New Section
125.214	New Section
125.216	New Section

4) Statutory Authority: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200/11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55] and Sections 26 and 27 of the Environmental Protection Act [415 ILCS 5/26 and 27].5) Effective Date of Rules: January 1, 20016) Does this rulemaking contain an automatic repeal date? No7) Do these rules contain incorporations by reference? No8) The adopted rules, including any material incorporated by reference, are on file in the Board's Chicago office and are available for public inspection.9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 555510) Has JCAR issued a Statement of Objection to these rules? No11) Differences between proposal and final version: In response to public comment, the Board re-wrote this Part to reflect current procedures. The first-notice version proposed some significant departures from current practice which the Board decided not to pursue at this time.

The Board retains the current practice of persons submitting tax certification applications to the Agency, rather than filing petitions for certification with the Board. See Section 125.202. The Board requires the Agency to file a recommendation on the application. The Agency must

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recommend that the Board issue or deny certification. See Section 125.204. The applicant may petition the Board to contest an Agency recommendation that the Board deny certification. See Section 125.206. The Agency then would have to file the record on which it based its recommendation. See Section 125.208. The Board will hold a hearing if the applicant files a petition to contest, unless the Board disposes of the petition on a motion for summary judgment. See 125.210(a)(1).

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes13) Will these rules replace emergency rules currently in effect? No14) Are there any amendments pending on this Part? No15) Summary and Purpose of Rules: Proposed Part 125 addresses how the Board will certify "pollution control facilities" and "low sulfur dioxide emission coal fueled devices" for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 et seq. (1998)). The Board has no existing procedural rules that specifically address tax certifications. Currently, persons apply to the Agency for tax certification and the Agency issues or denies the certificate. The applicant may appeal the Agency's decision to the Board.

Under Part 125, persons will continue to submit tax certification applications to the Agency. After reviewing the application, the Agency will file a recommendation with the Board that the Board issue or deny certification. Consistent with the Property Tax Code, the Board will issue or deny the certificate. If the applicant wishes to contest the Agency's recommendation to deny certification, it must file a petition to contest with the Board within 35 days after the Agency serves the recommendation on the applicant. Generally, if the applicant timely files the petition, the Agency must file the record on which it based its recommendation, and the Board will hold a public hearing. Ultimately, whether or not the applicant contests the Agency's recommendation, the Board will issue an order granting or denying tax certification.

As Section 11-30 of the Property Tax Code (35 ILCS 200/11-30 (1998)) provides, the Board, after notice to the certificate holder and an opportunity for a hearing, may revoke or modify a certificate in several circumstances. These circumstances include those when the certificate was obtained by fraud or misrepresentation, or when the facility to which the certificate applies is no longer used for the primary purpose of pollution control and is being used for a different purpose. See Section 125.216(c)(1) and (3). The Board may learn of the circumstances through any credible filing.

A more detailed discussion of these proposed rules is contained in the

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Board's opinion and order in R00-20, which the Board adopted on December 21, 2000. The opinion and order are available from the Board's Chicago office and on the Board's Web site.

- 16) Information and questions regarding these adopted rules shall be directed to:

Carol Sudman  
PCB  
600 S. Second St., Ste. 402  
Springfield, Illinois 62701  
(217) 524-8509

The opinion and order for this rule (R00-20) are available on the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). For copies please contact:

Dorothy Gunn, Clerk  
PCB  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601  
(312) 814-3620

The full text of the adopted rules begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

PART 125  
TAX CERTIFICATIONS

## SUBPART A: GENERAL PROVISIONS

Section  
125.100 Applicability  
125.102 Severability  
125.104 Definitions

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES  
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

Section  
125.200 General  
125.202 Tax Certification Application  
125.204 Agency Recommendation  
125.206 Petition to Contest  
125.208 Agency Record  
125.210 Public Hearing  
125.212 Hearing Notice  
125.214 Burden of Proof  
125.216 Board Action

AUTHORITY: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200/11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55] and Sections 26 and 27 of the Environmental Protection Act (the Act) [415 ILCS 5/26 and 27].

SOURCE: Adopted in R00-20 at 25 Ill. Reg. 642, effective 1/21/01.

## SUBPART A: GENERAL PROVISIONS

## Section 125.100 Applicability

- a) This Part applies to any person seeking, for property tax purposes, a Board certification that a facility or portion thereof is a pollution control facility, as defined in Section 125.200(a)(1) of this Part, or that a device is a low sulfur dioxide emission coal fueled device, as defined in Section 125.200(b)(1) of this Part.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all adjudicatory

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proceedings before the Board. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

**Section 125.102 Severability**

If any provision of this Part or its application to any person is adjudged invalid, the adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

**Section 125.104 Definitions**

For the purpose of this Part, words and terms will have the meaning as defined in 35 Ill. Adm. Code 101-Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

**SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES  
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES**

**Section 125.200 General**

a) Pollution Control Facilities. For tax purposes, pollution control facilities shall be certified as such by the Board. [35 ILCS 200/11-20]

1) "Pollution control facility" means, for purposes of this Part, any system, method, construction, device or appliance appurtenant thereto, or any portion of any building or equipment, that is designed, constructed, installed or operated for the primary purpose of: eliminating, preventing, or reducing air or water pollution, as the terms "air pollution" and "water pollution" are defined in the Act; or treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property. This term does not include any of the following:

- A) Any facility with the primary purpose of eliminating, containing, preventing or reducing radioactive contaminants or energy, or treating waste water produced by the nuclear generation of electric power;
- B) Large diameter pipes or piping systems used to remove and disperse heat from water involved in the nuclear generation of electric power;
- C) Any facility operated by any person other than a unit of government, whether within or outside of the territorial boundaries of a unit of local government, for sewage disposal or treatment; or
- D) Land underlying a cooling pond. [35 ILCS 200/11-10]

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- 2) It is the policy of this State that pollution control facilities should be valued at 33 1/3% of the fair cash value of their economic productivity to their owners. [35 ILCS 200/11-5]
- b) Low Sulfur Dioxide Emission Coal Fueled Devices. For tax purposes, a low sulfur dioxide emission coal fueled device shall be certified as such by the Board. [35 ILCS 200/11-50]

- 1) "Low sulfur dioxide emission coal fueled device" means, for purposes of this Part, any device used or intended for the purpose of burning, combusting or converting locally available coal in a manner which eliminates or significantly reduces the need for additional sulfur abatement that would otherwise be required under State or Federal air emission standards. For purposes of this definition, the word device includes all machinery, equipment, structures and all related apparatus, including coal feeding equipment, of a coal gasification facility designed to convert locally available coal into a low sulfur gaseous fuel and to manage all waste and by-product streams. [35 ILCS 200/11-40]
- 2) It is the policy of this State that the use of low sulfur dioxide emission coal fueled devices should be encouraged as conserving nonrenewable resources, reducing pollution and promoting the use of abundant, high-sulfur, locally available coal as well as promoting the health and well-being of the people of this State, and should be valued at 33 1/3% of their fair cash value. [35 ILCS 200/11-35]

**Section 125.202 Tax Certification Application**

A person may apply for tax certification by submitting a tax certification form to the Agency on a form or forms that the Agency may prescribe.

**Section 125.204 Agency Recommendation**

- a) If the Agency receives a tax certification application under Section 125.202 of this Subpart, the Agency must file a recommendation on the application with the Clerk, unless the applicant withdraws the application. The Agency's filing must:
  - 1) Identify the name and address of the applicant;
  - 2) Identify the location of the facility or portion thereof or the device to which the recommendation applies;
  - 3) Identify the facility or portion thereof or the device to which the recommendation applies;
  - 4) Recommend that the Board issue or deny tax certification; and
  - 5) Set forth the Agency's reasoning for the recommendation.
- b) If the Agency recommends that the Board deny tax certification, the Agency's filing must state that the applicant has 35 days after the date of service thereof to file a petition with the Board to contest the Agency recommendation. If the Agency recommends that the Board

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deny tax certification due to informational deficiencies in the application, the Agency's filing must identify the types of information needed to correct the deficiencies.

- c) The Agency must serve the applicant with a copy of the filing under this Section.

**Section 125.206 Petition to Contest**

- a) If the applicant wishes to contest an Agency recommendation that the Board deny tax certification, the applicant must file a petition to contest with the Clerk within 35 days after the Agency serves the applicant under Section 125.204(c) of this Subpart. The petition must:

- 1) Specify the grounds for contesting the Agency's recommendation; and
  - 2) Specify the date on which the Agency served the applicant under Section 125.204(c) of this Subpart.
- b) The applicant must serve the Agency with a copy of any petition to contest under subsection (a) of this Section.

**Section 125.208 Agency Record**

The Agency must file with the Board the entire record on which it based its recommendation within 30 days after the applicant files a petition to contest under Section 125.206 of this Subpart, unless the Board or hearing officer orders otherwise. If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed.

**Section 125.210 Public Hearing**

- a) The Board will hold a public hearing in a tax certification proceeding if:
- 1) The applicant files a petition to contest in accordance with Section 125.206 of this Subpart, unless the Board disposes of the petition on a motion for summary judgement brought pursuant to 35 Ill. Adm. Code 101.516; or
  - 2) The Board in its discretion determines that a hearing would be advisable.
- b) If a hearing is to be held, the hearing officer will set a time and place for the hearing. The hearing officer will make an attempt to consult with the applicant and the Agency before scheduling a hearing. Hearings will be held in the county where the facility or portion thereof or the device for which the applicant seeks a tax certification is located, unless the hearing officer orders otherwise.

**Section 125.212 Hearing Notice**

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After receiving notification from the hearing officer of the scheduled hearing date made pursuant to Section 125.210 of this Subpart, the Clerk will, in accordance with 35 Ill. Adm. Code 101, cause publication of a notice of hearing in a newspaper of general circulation in the county where the facility or portion thereof or the device for which the applicant seeks tax certification is located.

**Section 125.214 Burden of Proof**

If the applicant files a petition to contest under Section 125.206 of this Subpart or the Board otherwise directs that a hearing be held pursuant to Section 125.210 of this Subpart, the applicant has the burden to prove that the facility or portion thereof for which it seeks tax certification is a pollution control facility, as defined in Section 125.200(a)(1) of this Subpart, or that the device for which it seeks tax certification is a low sulfur dioxide emission coal fueled device, as defined in Section 125.200(b)(1) of this Subpart.

**Section 125.216 Board Action**

- a) Pollution Control Facilities. If it is found that the claimed facility or relevant portion thereof is a pollution control facility as defined in Section 125.200(a)(1) of this Part, the Board shall enter a finding and issue a certificate to that effect. The certificate shall require tax treatment as a pollution control facility, but only for the portion certified if only a portion is certified. The effective date of a certificate shall be the date of the petition for the certificate or the date of the construction of the facility, whichever is later. [35 ILCS 200/11-25]
- b) Low Sulfur Dioxide Emission Coal Fueled Devices. If it is found that the claimed device meets the definition of low sulfur dioxide emission coal fueled device as set forth in Section 125.200(b)(1) of this Part, the Board shall enter a finding and issue a certificate that requires tax treatment as a low sulfur dioxide emission coal fueled device. The effective date of a certificate shall be on January 1 preceding the date of certification or preceding the date construction or installation of the device commences, whichever is later. [35 ILCS 200/11-55]
- c) After notice to the holder of the certificate and an opportunity for a hearing pursuant to this Subpart, the Board may on its own initiative revoke or modify a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate whenever any of the following appears:
- 1) The certificate was obtained by fraud or misrepresentation;
  - 2) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of pollution control facilities or a low sulfur dioxide emission coal fueled device; or



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- 3) *The pollution control facility to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different purpose.* [35 ILCS 200/11-30]
- d) The Clerk will provide the applicant and the Agency with a copy of the Board's order setting forth the Board's findings and certificate, if any [35 ILCS 200/11-30].

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- 1) Heading of the Part: Tiered Approach to Corrective Action Objectives
- 2) Code Citation: 35 Ill. Adm. Code 742
- 3) Section Numbers: Adopted Action:  
     742.200                      Amended  
     742.1000                    Amended  
     742.1010                    Amended  
     742.1012                    Added  
     APPENDIX A, TABLE G      Amended
- 4) Statutory Authority: 415 ILCS 5/27
- 5) Effective Date of Rulemaking: January 6, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Board's Chicago office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: August 11, 2000, 24 Ill. Reg. 11761
- 10) Has JCAR issued a Statement of Objection to these amendments? Yes, non-substantive, procedural objection to the Board's inclusion of Appendix A, Table G in this rulemaking. The Board filed a response to the objection with JCAR and the Secretary of State indicating that no change would be made to the rule in response to the objection.
- A) Statement of Objection: December 29, 2000, 24 Ill. Reg. 19379
- B) Agency Response: December 29, 2000, 24 Ill. Reg. 19361
- C) Date Agency Response Submitted for Approval to JCAR: December 21, 2000
- 11) Differences between proposal and final version: In response to a request and informational presentation from the United States Department of Defense, the Board adopted an exclusion from the Environmental Land Use Control provisions of Section 742.1010 for "nonexcess" federally owned property. This exception was adopted with the consent of the Illinois Environmental Protection Agency, the proponent of the rulemaking.
- Additionally, the Board, in response to public comment, included changes to Appendix A, Table G in this rulemaking. Appendix A, Table G had previously



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been part of the Subdocket B portion of this rulemaking, which was adopted for first notice and proceeded to public hearing simultaneously with this Subdocket A. The change to Appendix A, Table G involves a revision to the background levels of arsenic.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will this rulemaking replace an emergency rulemaking currently in effect?  
No

14) Are there any amendments pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
742.210	Amend	24 Ill. Reg. 12225
742.220	Amend	24 Ill. Reg. 12225
742.225	Amend	24 Ill. Reg. 12225
742.300	Amend	24 Ill. Reg. 12225
742.305	Amend	24 Ill. Reg. 12225
742.310	Amend	24 Ill. Reg. 12225
742.315	Amend	24 Ill. Reg. 12225
742.605	Amend	24 Ill. Reg. 12225
742.700	Amend	24 Ill. Reg. 12225
742.710	Amend	24 Ill. Reg. 12225
742.715	Amend	24 Ill. Reg. 12225
742.805	Amend	24 Ill. Reg. 12225
742.810	Amend	24 Ill. Reg. 12225
742.900	Amend	24 Ill. Reg. 12225
742.925	Amend	24 Ill. Reg. 12225
742.1005	Amend	24 Ill. Reg. 12225
742.1015	Amend	24 Ill. Reg. 12225
742.1020	Amend	24 Ill. Reg. 12225
742.1105	Amend	24 Ill. Reg. 12225

## APPENDIX A

Table A	Amend	24 Ill. Reg. 12225
Table D	Amend	24 Ill. Reg. 12225
Table E	Amend	24 Ill. Reg. 12225
Table F	Amend	24 Ill. Reg. 12225
Table G	Amend	24 Ill. Reg. 12225
Table H	Amend	24 Ill. Reg. 12225

## APPENDIX B

Table A	Amend	24 Ill. Reg. 12225
Table B	Amend	24 Ill. Reg. 12225
Table C	Amend	24 Ill. Reg. 12225
Table D	Amend	24 Ill. Reg. 12225
Table E	Amend	24 Ill. Reg. 12225
Table F	Amend	24 Ill. Reg. 12225

## APPENDIX C

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Table A	Amend	24 Ill. Reg. 12225
Table B	Amend	24 Ill. Reg. 12225
Table C	Amend	24 Ill. Reg. 12225
Table D	Amend	24 Ill. Reg. 12225
Table E	Amend	24 Ill. Reg. 12225
Table I	Amend	24 Ill. Reg. 12225
Table J	Amend	24 Ill. Reg. 12225

15) Summary and Purpose of Rulemaking: A more detailed discussion of these proposed rules is contained in the Board's opinion and order in R00-19(A), which the Board adopted on December 21, 2000. The opinion and order is available from the address at item (16) below.

Briefly, however, this rulemaking makes certain substantive changes to Part 742 of the Board's rules specifically pertaining to "Institutional Controls." Those changes are:

i. The addition of an "Environmental Land Use Control (ELUC) as an institutional control as required by Public Act 91-909. The proposed change includes a definition of ELUC and regulations for using an ELUC. With the addition of an ELUC as an institution control, the Board also deleted the following terms, "restrictive covenant," "negative easement," and "deed restriction."

ii. The addition of a "Land Use Control Memorandum of Agreement" (LUCMOA) that will be used in lieu of the ELUC at federally owned properties in the State of Illinois.

iii. The adoption of revised background levels for arsenic in both metropolitan and non-metropolitan areas.

iv. Corrections of typographical errors identified by JCAR in Part 742 following adoption of the second notice opinion and order on November 16, 2000.

16) Information and questions regarding these adopted amendments shall be directed to:

Amy L. Jackson  
Pollution Control Board  
600 South Second Street  
Suite 402  
Springfield, Illinois 62704  
217/524-8507

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the following address: Dorothy Gunn, Clerk, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601. Please refer to the Docket number R00-19(A) in your request. The Board order is also available from the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)).

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The full text of the adopted amendments begins on the next page:

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SUBTITLE G: WASTE DISPOSAL

CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER I: RISK BASED CLEANUP OBJECTIVES

## PART 742

TIERED APPROACH TO CORRECTIVE ACTION OBJECTIVES

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**AUTHORITY:** Implementing Sections 22.4, 22.12, Title XVI, Title XVII and Public Act 91-909, and authorized by Sections 27, 57.14, and 58.5 of the Environmental Protection Act [415 ILCS 5/22.4, 22.12, 27, 57.14 and 58.5 and Title XVI and Title XVII].

**SOURCE:** Adopted in R97-12(A) at 21 Ill. Reg. 7942, effective July 1, 1997; amended in R97-12(B) at 21 Ill. Reg. 16391, effective December 8, 1997; amended in R97-12(C) at 22 Ill. Reg. 10447, effective June 8, 1998; amended at R00-19(A) at 25 Ill. Reg. 851, effective JAN 06 2001.

**NOTE:** In this Part, unless the context clearly indicates otherwise, superscript numbers or letters are denoted by parentheses; subscript are denoted by brackets; and SUM means the summation series or sigma function as used in mathematics.

## SUBPART B: GENERAL

## Section 742.200 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part shall be the same as that applied to the same words or terms in the Act.

"Act" means the Illinois Environmental Protection Act [415 ILCS 5].

"ADL" means Acceptable Detection Limit, which is the detectable concentration of a substance that which is equal to the lowest appropriate Practical Quantitation Limit (PQL) as defined in this Section.

"Agency" means the Illinois Environmental Protection Agency.

"Agricultural Property" means any real property for which its present or post-remediation use is for growing agricultural crops for food or feed either as harvested crops, cover crops or as pasture. This definition includes, but is not limited to, properties used for confinement or grazing of livestock or poultry and for silviculture operations. Excluded from this definition are farm residences, farm outbuildings and agricultural facilities.

"Area Background" means concentrations of regulated substances that

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are consistently present in the environment in the vicinity of a site that are the result of natural conditions or human activities, and not the result solely of releases at the site. [415 ILCS 5/58.2] (Section 58-2-of-the-Act)

"ASTM" means the American Society for Testing and Materials.

"Board" means the Illinois Pollution Control Board.

"Cancer Risk" means a unitless probability of an individual developing cancer from a defined exposure rate and frequency.

"Cap" means a barrier designed to prevent the infiltration of precipitation or other surface water, or impede the ingestion or inhalation of contaminants.

"Carcinogen" means a contaminant that is classified as a category A1 or A2 carcinogen by the American Conference of Governmental Industrial Hygienists; a category 1 or 2A/2B carcinogen by the World Health Organization's International Agency for Research on Cancer; a "human carcinogen" or "anticipated human carcinogen" by the United States Department of Health and Human Service National Toxicological Program; or a category A or B1/B2 carcinogen by the United States Environmental Protection Agency in the integrated risk information system or a final rule issued in a Federal Register notice by the USEPA. [415 ILCS 5/58.2] (Section-58-2-of-the-Act)

"Class I Groundwater" means groundwater that meets the Class I: Potable Resource Groundwater criteria set forth in 35 Ill. Adm. Code 620.

"Class II Groundwater" means groundwater that meets the Class II: General Resource Groundwater criteria set forth in 35 Ill. Adm. Code 620.

"Conservation Property" means any real property for which present or post-remediation use is primarily for wildlife habitat.

"Construction Worker" means a person engaged on a temporary basis to perform work involving invasive construction activities including, but not limited to, personnel performing demolition, earth-moving, building, and routine and emergency utility installation or repair activities.

"Contaminant of Concern" or "Regulated Substance of Concern" means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the person conducting a remediation based upon reasonable inquiry. [415

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ILCS 5/58.2] (Section-58-2-of-the-Act)

"Engineered Barrier" means a barrier designed or verified using engineering practices that limits exposure to or controls migration of the contaminants of concern.

"Environmental Land Use Control" means an instrument that meets the requirements of this Part and is placed in the chain of title to real property that limits or places requirements upon the use of the property for the purpose of protecting human health or the environment, is binding upon the property owner, heirs, successors, assigns, and lessees, and runs in perpetuity or until the Agency approves, in writing, removal of the limitation or requirement from the chain of title.

"Exposure Route" means the transport mechanism by which a contaminant of concern reaches a receptor.

"Federally Owned Property" means real property owned in fee by the United States of America on which institutional controls are sought to be placed in accordance with this Subpart.

"Federal Landholding Entity" means that federal department, agency, or instrumentality with the authority to occupy and control the day-to-day use, operation and management of Federally Owned Property.

"Free Product" means a contaminant that is present as a non-aqueous phase liquid for chemicals whose melting point is less than 30°C (e.g., liquid not dissolved in water).

"GIS" means Geographic Information System.

"GPS" means Global Positioning System.

"Groundwater" means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure. [415 ILCS 5/3.64] (Section-3-64-of-the-Act)

"Groundwater Quality Standards" means the standards for groundwater as set forth in 35 Ill. Adm. Code 620.

"Hazard Quotient" means the ratio of a single substance exposure level during a specified time period to a reference dose for that substance derived from a similar exposure period.

"Highway" means any public way for vehicular travel which has been laid out in pursuance of any law of this State, or of the Territory

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of Illinois, or which has been established by dedication, or used by the public as a highway for 15 years, or which has been or may be laid out and connect a subdivision or platted land with a public highway and which has been dedicated for the use of the owners of the land included in the subdivision or platted land where there has been an acceptance and use under such dedication by such owners, and which has not been vacated in pursuance of law. The term "highway" includes rights of way, bridges, drainage structures, signs, guard rails, protective structures and all other structures and appurtenances necessary or convenient for vehicular traffic. A highway in a rural area may be called a "road", while a highway in a municipal area may be called a "street". (Illinois Highway Code [605 ILCS 5/2-202])

"Highway Authority" means the Department of Transportation with respect to a State highway; the County Board with respect to a county highway or a county unit district road if a discretionary function is involved and the County Superintendent of Highways if a ministerial function is involved; the Highway Commissioner with respect to a township or district road not in a county unit road district; or the corporate authorities of a municipality with respect to a municipal street. (Illinois Highway Code [605 ILCS 5/2-213])

"Human Exposure Pathway" means a physical condition which may allow for a risk to human health based on the presence of all of the following: contaminants of concern; an exposure route; and a receptor activity at the point of exposure that could result in contaminant of concern intake.

"Industrial/Commercial Property" means any real property that does not meet the definition of residential property, conservation property or agricultural property.

"Infiltration" means the amount of water entering into the ground as a result of precipitation.

"Institutional Control" means a legal mechanism for imposing a restriction on land use, as described in Subpart J.

"Land Use Control Memorandums of Agreement" means agreements entered into between one or more agencies of the United States and the Illinois Environmental Protection Agency that limit or place requirements upon the use of Federally Owned Property for the purpose of protecting human health or the environment.

"Man-Made Pathways" means constructed physical conditions that may allow for the transport of regulated substances including, but not limited to, sewers, utility lines, utility vaults, building foundations, basements, crawl spaces, drainage ditches, or previously



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excavated and filled areas. [415 ILCS 5/58.2] (Section 58-2-of-the Act)

"Natural Pathways" means natural physical conditions that may allow for the transport of regulated substances including, but not limited to, soil, groundwater, sand seams and lenses, and gravel seams and lenses. [415 ILCS 5/58.2] (Section 58-2-of-the-Act)

"Negative-Basement" means a tight--of-the-owner-of-the-dominant-or benefitted-estate-or-property-to-restrict-the-property-rights--of--the owner-of-the-servient-or-burdened-estate-or-property:

"Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body including the United States government and each department, agency, and instrumentality of the United States. [415 ILCS 5/58.2] (Section 58-2-of-the-Act)

"Point of Human Exposure" means the point(s) at which human exposure to a contaminant of concern may reasonably be expected to occur. The point of human exposure is at the source, unless an institutional control limiting human exposure for the applicable exposure route has been or will be in place, in which case the point of human exposure will be the boundary of the institutional control. Point of human exposure may be at a different location than the point of compliance.

"PQL" means practical quantitation limit or estimated quantitation limit, which is the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", EPA Publication No. SW-846, incorporated by reference in Section 742.210. When applied to filtered water samples, PQL includes the method detection limit or estimated detection limit in accordance with the applicable method revision in: "Methods for the Determination of Organic Compounds in Drinking Water", Supplement II", EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III", EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference in Section 742.210.

"RPCA" means Risk Based Corrective Action as defined in ASTM E-1739-03, as incorporated by reference in Section 742.210.

"RCRA" means the Resource Conservation and Recovery Act of 1976 (42 USC 8701-67 6921).

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"Reference Concentration (RfC)" means an estimate of a daily exposure, in units of milligrams of chemical per cubic meter of air (mg/m<sup>3</sup>), to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a portion of a lifetime (up to approximately seven years, subchronic) or for a lifetime (chronic).

"Reference Dose (RfD)" means an estimate of a daily exposure, in units of milligrams of chemical per kilogram of body weight per day (mg/kg/d), to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a portion of a lifetime (up to approximately seven years, subchronic) or for a lifetime (chronic).

"Regulated Substance" means any hazardous substance as defined under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510) and petroleum products including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). [415 ILCS 5/58.2] (Section 58-2-of-the-Act)

"Residential Property" means any real property that is used for habitation by individuals, or where children have the opportunity for exposure to contaminants through soil ingestion or inhalation at educational facilities, health care facilities, child care facilities or outdoor recreational areas. [415 ILCS 5/58.2]

"Restrictive-Governant-or-Deed-Restriction" means a provision placed in a deed limiting the use of the property and prohibiting certain uses. (Black's Law Dictionary, 5th Edition)

"Right of Way" means the land, or interest therein, acquired for or devoted to a highway. (Illinois Highway Code [605 ILCS 5/2-217])

"Similar-Acting Chemicals" are chemical substances that have toxic or harmful effect on the same specific organ or organ system (see Appendix A.Tables E and F for a list of similar-acting chemicals with noncarcinogenic and carcinogenic effects).

"Site" means any single location, place, tract of land or parcel of property, or portion thereof, including contiguous property separated by a public right-of-way. [415 ILCS 5/58.2] (Section 58-2-of-the-Act)

"Slurry Wall" means a man-made barrier made of geologic material which is constructed to prevent or impede the movement of contamination into a certain area.

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"Soil Saturation Limit (C[sat])" means the contaminant concentration at which soil pore air and pore water are saturated with the chemical and the adsorptive limits of the soil particles have been reached.

"Solubility" means a chemical specific maximum amount of solute that can dissolve in a specific amount of solvent (groundwater) at a specific temperature.

"SRP" means Synthetic Precipitation Leaching Procedure (Method 1312) as published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", USEPA Publication No. SW-846, as incorporated by reference in Section 742.210.

"SSL" means Soil Screening Levels as defined in USEPA's Soil Screening Guidance: User's Guide and Technical Background Document, as incorporated by reference in Section 742.210.

"Stratigraphic Unit" means a site-specific geologic unit of native deposited material and/or bedrock of varying thickness (e.g., sand, gravel, silt, clay, bedrock, etc.). A change in stratigraphic unit is recognized by a clearly distinct contrast in geologic material or a change in physical features within a zone of gradation. For the purposes of this Part, a change in stratigraphic unit is identified by one or a combination of differences in physical features such as texture, cementation, fabric, composition, density, and/or permeability of the native material and/or bedrock.

"TCLP" means Toxicity Characteristic Leaching Procedure (Method 1311) as published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", USEPA Publication No. SW-846, as incorporated by reference in Section 742.210.

"Total Petroleum Hydrocarbon (TPH)" means the additive total of all petroleum hydrocarbons found in an analytical sample.

"Volatile Organic Compounds (VOCs)" means organic chemical analytes identified as volatiles as published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", USEPA Publication No. SW-846 (incorporated by reference in Section 742.210), method numbers 8010, 8011, 8015, 8020, 8021, 8030, 8031, 8240, 8260, 8315, and 8316. For analytes not listed in any category in those methods, those analytes which have a boiling point less than 200°C and a vapor pressure greater than 0.1 Torr (mm Hg) at 20°C.

(Source: Amended at 25 Ill. Reg. 651, effective JAN 6 1997)

## SUBPART J: INSTITUTIONAL CONTROLS

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## Section 742.1000 Institutional Controls

a) Institutional controls in accordance with this Subpart must be placed on the property when remediation objectives are based on any of the following assumptions:

- 1) Industrial/Commercial property use;
- 2) Target cancer risk greater than 1 in 1,000,000;
- 3) Target hazard quotient greater than 1;
- 4) Engineered barriers;
- 5) The point of human exposure is located at a place other than at the source;
- 6) Exclusion of exposure routes under Subpart E; or
- 7) Any combination of the above.

b) The Agency shall not approve any remediation objective under this Part that is based on the use of institutional controls unless the person has proposed institutional controls meeting the requirements of this Subpart and the requirements of the specific program under which the institutional control is proposed. A proposal for approval of institutional controls shall provide identification of the selected institutional controls from among the types recognized in this Subpart.

c) The following instruments may be institutional controls subject to the requirements of this Subpart J and the requirements of the specific program under which the institutional control is proposed:

- 1) No Further Remediation Letters;
- 2) Environmental Land Use Controls Restrictive--covenants--and--deed restrictions;
- 3) Land Use Control Memorandums of Agreement;
- 3+ Negative-easements;
- 4) Ordinances adopted and administered by a unit of local government; and
- 5) Agreements between a property owner and a highway authority with respect to any contamination remaining under highways.

d) No Further Remediation Letters and Environmental Land Use Controls that meet the requirements of this Subpart and the recording requirements of the program under which remediation is being performed are an institutional control--is transferred with the property.

(Source: Amended at 25 Ill. Reg. 651, effective JAN 6 1997)

## Section 742.1010 Environmental Land Use Controls Restrictive-Covenants,-Deed Restrictions-and-Negative-Easements

a) An Environmental Land Use Control (ELUC) is an institutional control that may be used under this Part to impose land use limitations or requirements related to environmental contamination. ELUCs are only effective when approved by the Agency in accordance with this Part.

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Activities or uses that may be limited or required include, but are not limited to, prohibition of use of groundwater for potable purposes, restriction to industrial/commercial uses, operation or maintenance of engineered barriers, or worker safety plans. ELUCs may be used in the following circumstances:

- 1) When No Further Remediation Letters are not available, including but not limited to when contamination has migrated off-site or outside the remediation site; or
- 2) When No Further Remediation Letters are not issued under the program for which a person is undergoing remediation.

## b) Recording requirements:

- 1) An ELUC approved by the Agency pursuant to this Section must be recorded in the Office of the Recorder or Register of Titles for the county in which the property that is the subject of the ELUC is located. A copy of the ELUC demonstrating that it has been recorded must be submitted to the Agency before the Agency will issue a no further remediation determination.

- 2) An ELUC approved under this Section will not become effective until officially recorded in the chain of title for the property that is the subject of the ELUC in accordance with subsection (b)(1) of this Section.

- 3) Reference to the recorded ELUC must be made in the instrument memorializing the Agency's no further remediation determination. Recording of the no further remediation determination and confirmation of recording must be in accordance with the requirements of the program under which the determination was issued.

- 4) The requirements of this Section do not apply to Federally Owned property for which the Federal Landholding Entity does not have the authority under federal law to record land use limitations on the chain of title.

- 5) The requirements of this Section apply only to those sites for which a request for a no further remediation determination has not yet been made to the Agency by January 6, 2001.

## c) Duration:

- 1) Except as provided in this subsection (c), an ELUC shall remain in effect in perpetuity.

- 2) At no time shall any site for which an ELUC has been imposed as a result of remediation activities under this Part be used in a manner inconsistent with the land use limitation unless attainment of objectives appropriate for the new land use is achieved and a new no further remediation determination has been obtained and recorded in accordance with the program under which the ELUC was first imposed or the Site Remediation Program (35 Ill. Adm. Code 740). [415 ILCS 58.8(c)]. In addition, the appropriate release or modification of the ELUC must be prepared by the Agency and filed on the chain of title for the property that is the subject of the ELUC.

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- A) For a Leaking Underground Storage Tank (LUST) site under 35 Ill. Adm. Code 731 or 732 or a Site Remediation Program site under 35 Ill. Adm. Code 740, an ELUC may be released or modified only if the NFR Letter is modified under the LUST or Site Remediation Program to reflect the change.

- B) For a RCRA site under 35 Ill. Adm. Code 721-730, an ELUC may be released or modified only by an amended certification of closure or a permit modification.

- 3) In addition to any other remedies that may be available, a failure to comply with the limitations or requirements of an ELUC may result in avoidance of an Agency no further remediation determination in accordance with the program under which the determination was made. The failure to comply with the limitations or requirements of an ELUC may also be grounds for an enforcement action pursuant to Title VII of the Act.

## d) An ELUC must contain the following elements:

- 1) Name of property owners and declaration of property ownership;
- 2) Identification of the property to which the ELUC applies by common address, legal description, and Real Estate Tax Index/Parcel Index Number;
- 3) A reference to the Bureau of Land LPC numbers or 10-digit identification numbers under which the remediation was conducted;
- 4) A statement of the reason for the land use limitation or requirement relative to protecting human health and the surrounding environment from soil, groundwater, and/or other environmental contamination;
- 5) The language instituting such land use limitations or requirements;
- 6) A statement that the limitations or requirements apply to the current owners, occupants, and all heirs, successors, assigns, and lessees;
- 7) A statement that the limitations or requirements apply in perpetuity or until:
  - A) The Agency issues a new no further remediation determination approving modification or removal of the limitations or requirements; and
  - B) A release or modification of the land use limitation is filed on the chain of title for the property that is the subject of the ELUC;

## 8) Scaled site maps showing:

- A) The legal boundary of the property to which the ELUC applies;
- B) The horizontal and vertical extent of contaminants of concern above applicable remediation objectives for soil and groundwater to which the ELUC applies;
- C) Any physical features to which an ELUC applies (e.g., engineered barriers, monitoring wells, caps); and
- D) The nature, location of the source, and direction of

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movement of the contaminants of concern;

- 9) A statement that any information regarding the remediation performed on the property for which the ELUC is necessary may be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140] and rules promulgated thereunder; and

- 10) The dated, notarized signatures of the property owners or authorized agent.

a) A--restrictive--covenant--deed--restriction--or--negative--easement--may--be--used--as--an--institutional--control--under--this--Part--if--the--requirements--of--this--Section--are--met--and--the--Agency--has--determined--that--no--further--remediation--is--required--as--to--the--property--to--which--the--institutional--control--is--to--apply;

b) A--request--for--approval--of--a--restrictive--covenant--deed--restriction--or--negative--easement--as--an--acceptable--institutional--control--shall--provide--the--following:

- 1) A--copy--of--the--restrictive--covenant--deed--restriction--or--negative--easement--in--the--form--it--will--be--recorded--with--the--Office--of--the--Recorder--or--Registrar--of--titles--in--the--county--where--the--site--is--located;

- 2) A--scaled--map--showing--the--horizontal--extent--of--contamination--above--the--applicable--remediation--objectives;

- 3) Information--showing--the--concentration--of--contaminants--of--concern--in--which--the--applicable--remediation--objectives--are--exceeded;

- 4) A--scaled--map--showing--the--legal--boundaries--of--all--properties--under--which--contamination--is--located--that--exceeds--the--applicable--remediation--objectives--and--which--are--subject--to--the--restrictive--covenant--deed--restriction--or--negative;

- 5) Information--identifying--the--current--owner(s)--of--each--property--identified--in--subsection--(b)(4)--of--this--Section--and

- 6) Authorization--by--the--current--owner(s)--or--person--authorized--by--law--to--act--on--behalf--of--the--owner--of--each--property--identified--in--subsection--(b)(5)--of--this--Section--to--record--the--restrictive--covenant--or--deed--restriction;

c) Any--restrictive--covenant--deed--restriction--or--negative--easement--approved--by--the--Agency--pursuant--to--this--Section--shall--be--recorded--in--the--Office--of--the--Recorder--or--Registrar--of--titles--of--the--county--in--which--the--site--is--located--together--with--the--instrument--memorializing--the--Agency's--no--further--remediation--determination--pursuant--to--the--specific--program--with--45--days--after--receipt--of--the--Agency's--no--further--remediation--determination;

d) An--institutional--control--approved--under--this--Section--shall--not--become--effective--until--officially--recorded--in--accordance--with--subsection--(e)--of--this--Section--the--person--receiving--the--approval--shall--obtain--and--submit--to--the--Agency--within--30--days--after--recording--a--copy--of--the--institutional--control--demonstrating--that--it--has--been--recorded.

e) At--no--time--shall--any--site--for--which--land--use--has--been--restricted--under--an--institutional--control--approved--under--this--Section--be--used--in--a

## POLLUTION CONTROL BOARD

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manner--inconsistent--with--such--land--use--limitation--unless--further--investigation--or--remedial--action--has--been--conducted--that--documents--the--attainment--of--remediation--objectives--appropriate--for--such--land--use--and--a--new--institutional--control--if--necessary--is--approved--and--recorded--in--accordance--with--subsection--(c)--of--this--Section.

- f) Violation--of--the--terms--of--an--institutional--control--approved--under--this--Section--shall--be--grounds--for--voidance--of--the--institutional--control--and--the--instrument--memorializing--the--Agency's--no--further--remediation--determination;

(Source: Amended at 25 Ill. Reg. 65, effective 1/1/84)

### Section 742.1012 Federally Owned Property: Land Use Control Memorandums of Agreement

- a) A Land Use Control Memorandum of Agreement (LUC MOA) between one or more agencies of the federal government and the Illinois Environmental Protection Agency is an institutional control that may be used under this Part to impose land use limitation or restrictions related to environmental contamination on Federally Owned Property. A LUC MOA may be used only for Federally Owned Property. Each LUC MOA, at a minimum, must require that the Federal Landholding Entities responsible for the Federally Owned Property do the following:

- 1) Provide adequate identification of the location on the Federally Owned Property of each site with land use limitations or requirements. Such identification shall be by means of common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means which identifies the site in question with particularity;

- 2) Implement periodic site inspection procedures to ensure adequate oversight by the Federal Landholding Entities of such land use limitation or requirement;

- 3) Implement procedures for the Federal Landholding Entities to periodically advise the Agency of continued compliance with the maintenance of the land use control and site inspection requirements included in the LUC MOA;

- 4) Implement procedures for the Federal Landholding Entities to notify the Agency of any planned or emergency changes in land use that may adversely impact any site with land use limitations or requirements; and

- 5) Notify the Agency at least 60 days in advance of a conveyance by deed or fee simple title, by the Federal Landholding Entities, of a site with land use limitations or requirements, to any entity that will not remain or become a Federal Landholding Entity, and provide the Agency with information about how the Federal Landholding Entities will ensure that the requirements of Section



## POLLUTION CONTROL BOARD

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- 742.1010 are to be satisfied upon conveyance of that site.  
 b) Any LUC MOA entered into pursuant to this Section remains effective only so long as title to the affected property is retained by the United States.

(Source: Added at 25 Ill. Reg. 85.2-2, effective JAN 16, 1991)

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

## Section 742.APPENDIX A General

## Section 742.TABLE G Concentrations of Inorganic Chemicals in Background Soils

Chemical Name	Counties Within		Counties Outside	
	Metropolitan Statistical Areas (mg/kg)	Metropolitan Statistical Areas (mg/kg)	Metropolitan Statistical Areas (mg/kg)	Metropolitan Statistical Areas (mg/kg)
Aluminum	9,500	9,200		
Antimony	4.0	3.3		
Arsenic	13.0 7-2	11.3 5-2		
Barium	110	122		
Beryllium	0.59	0.56		
Cadmium	0.6	0.50		
Calcium	9,300	5,525		
Chromium	16.2	13.0		
Cobalt	8.9	8.9		
Copper	19.6	12.0		
Cyanide	0.51	0.50		
Iron	15,900	15,000		
Lead	36.0	20.9		
Magnesium	4,820	2,700		
Manganese	636	630		
Mercury	0.06	0.05		
Nickel	18.0	13.0		
Potassium	1,268	1,100		
Selenium	0.48	0.37		
Silver	0.55	0.50		
Sodium	130	130.0		
Sulfate	85.5	110		
Sulfide	3.1	2.9		
Thallium	0.32	0.42		
Vanadium	25.2	25.0		
Zinc	95.0	60.2		

BOARD NOTE: Counties within Metropolitan Statistical Areas: Boone, Champaign, Clinton, Cook, DuPage, Grundy, Henry, Jersey, Kane, Kankakee, Kendall, Lake, Macon, Madison, McHenry, McLean, Menard, Monroe, Peoria, Rock Island, Sangamon, St. Clair, Tazewell, Will, Winnebago and Woodford.

(Source: Amended at 25 Ill. Reg. 85.2-2, effective JAN 16, 1991)



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED REPEALER

- 1) Heading of the Part: Variances
- 2) Code Citation: 35 Ill. Adm. Code 104
- 3) Section Numbers:
- |         |                 |
|---------|-----------------|
| 104.102 | Adopted Action: |
| 104.103 | Repealed        |
| 104.104 | Repealed        |
| 104.120 | Repealed        |
| 104.121 | Repealed        |
| 104.122 | Repealed        |
| 104.123 | Repealed        |
| 104.124 | Repealed        |
| 104.125 | Repealed        |
| 104.126 | Repealed        |
| 104.140 | Repealed        |
| 104.141 | Repealed        |
| 104.142 | Repealed        |
| 104.160 | Repealed        |
| 104.180 | Repealed        |
| 104.181 | Repealed        |
| 104.182 | Repealed        |
| 104.200 | Repealed        |
| 104.201 | Repealed        |
| 104.202 | Repealed        |
| 104.220 | Repealed        |
| 104.221 | Repealed        |

- 4) Statutory Authority: Implementing Sections 5, 33, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37 and 38] and authorized by Section 26 of the Act [415 ILCS 5/26].

- 5) Effective Date of Repealer: January 1, 2001

- 6) Does this rulemaking contain an automatic repeal date? No

- 7) Does this repealer contain incorporations by reference? No

- 8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5591

- 10) Has JCER issued a Statement of Objection to this repealer? No

- 11) Differences between proposal and final version: None

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- 12) Have all the changes agreed upon by the agency and JCER been made as indicated in the agreements letter issued by JCER? yes
- 13) Will this repealer replace an emergency repealer currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Repealer: In an effort to make the Board more accessible to the lay person, the Board proposes new user-friendly procedural rules that simplify, clarify, streamline and update the rules where necessary.
- 16) Information and questions regarding this adopted repealer shall be directed to:

Carol Sudman  
Pollution Control Board  
600 S. Second St., Suite 402  
Springfield, Illinois 62701  
(217) 524-8509

## DEPARTMENT OF PUBLIC AID

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- 1) Heading of the Part: Freedom of Information
- 2) Code Citation: 2 Ill. Adm. Code 1101
- 3) Section Numbers:

1101.50	Adopted Action:
1101.100	Amendment
1101.150	Amendment
1101.200	Amendment
1101.250	Amendment
1101.300	Amendment
1101.350	Amendment
1101.400	Amendment
1101.450	Amendment
1101.500	Amendment
1101.550	Amendment
TABLE A	Amendment
TABLE B	Amendment
TABLE C	Repeal
TABLE D	Repeal
TABLE E	Repeal
TABLE F	Repeal
TABLE G	Repeal
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and the Freedom of Information Act [5 ILCS 140]
- 5) Effective Date of Amendments: January 1, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any materials incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: These amendments to the Department's Freedom of Information rules at 2 Ill. Adm. Code 1101 are "required rules" as described in Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15]. Pursuant to the Act, "required rules" may be amended and adopted by filing a certified copy with the Secretary of State rather than according to any other rulemaking requirements. Therefore, the Department has not published a notice of proposed amendments concerning these amendments.
- 10) s JCAR issued a Statement of Objections to these rules? No

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- 11) Differences Between Proposal and final Version: Not applicable (see 9 above)
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Not applicable (see 9 above)
- 13) Will these amendments replace emergency amendments currently in effect? Not applicable (see 9 above)
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: These amendments to the Department's administrative rules at 2 Ill. Adm. Code 1101 are intended to provide updates and clarifications to insure that the rules reflect the Department's current Freedom of Information requirements and practices. Since rules under Title 2: Governmental Organization are "required rules" as described in Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15], the amendments are being adopted pursuant to Section 5-15(b) which allows such rules to be adopted, amended or repealed by filing a certified copy with the Secretary of State rather than according to any other rulemaking requirements. Therefore, the Department has not published a notice of proposed amendments concerning these amendments.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Joanne Jones  
Office of the General Counsel, Rules Section  
Illinois Department of Public Aid  
201 South Grand Avenue East, Third Floor  
Springfield, Illinois 62763-0002  
217/524-0081

The full text of the adopted amendments begins on the next page:

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## TITLE 2: GOVERNMENTAL ORGANIZATION

## SUBTITLE D: CODE DEPARTMENTS

## CHAPTER XVII: DEPARTMENT OF PUBLIC AID

## PART 1101

## FREEDOM OF INFORMATION

## SUBPART A: INTRODUCTION

Section  
1101.50 Summary and Purpose  
1101.100 Definitions

## SUBPART B: PROCEDURES FOR REQUESTING PUBLIC RECORDS

Section  
1101.150 Person to Whom Requests are Submitted  
1101.200 Form and Content of Requests

## SUBPART C: PROCEDURES FOR DEPARTMENT RESPONSE TO REQUESTS FOR PUBLIC RECORDS

Section  
1101.250 Timeline for Department Response  
1101.300 Types of Department Responses

## SUBPART D: PROCEDURES FOR APPEAL OF A DENIAL

Section  
1101.350 Appeal of a Denial  
1101.400 Director's Response to Appeal

## SUBPART E: PROCEDURES FOR PROVIDING PUBLIC RECORDS TO REQUESTORS

Section  
1101.450 Inspection of Records at Department Offices  
1101.500 Copies of Public Records  
1101.550 General Materials Available from the Office of Communications

## TABLE A Request for Public Records

## TABLE B Fee Schedule for Duplication of Public Records

## TABLE C Approval of Request for Public Records (Repealed)

## TABLE D Denial of Request for Public Records (Repealed)

## TABLE E Partial Approval of Request for Public Records (Repealed)

## TABLE F Deferral of Response to Request for Public Records (Repealed)

## TABLE G FOIA Appeal Director's Response (Repealed)

## DEPARTMENT OF PUBLIC AID

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**AUTHORITY:** Implementing and authorized by the Freedom of Information Act [5 ILCS 140] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15] and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/2-13].

**SOURCE:** Adopted and codified at 8 Ill. Reg. 10015, effective July 1, 1984; amended at 10 Ill. Reg. 14709, effective August 29, 1986; amended at 11 Ill. Reg. 8719, effective April 22, 1987; amended at 11 Ill. Reg. 18225, effective November 1, 1987; amended at 13 Ill. Reg. 8885, effective June 1, 1989; amended at 25 Ill. Reg. 674, effective January 1, 2001.

## SUBPART A: INTRODUCTION

## Section 1101.50 Summary and Purpose

- a) This part is established to implement the provisions of the Freedom of Information Act [5 ILCS 140 et seq.] ~~{Section 201-et-seq.-of-the-III-Rev.-Stat.-1905-ch.-116-par.-201-et-seq.-}~~. The purpose of this part is to support the policy of providing public access to the public records in the possession of this Department while, at the same time, protecting legitimate privacy interests and maintaining administrative efficiency.
- b) This Part creates a procedure by which the public may request and obtain public records. Therefore, ~~it is~~ is being filed in accordance with Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15] ~~III-Rev-Stat.-1991-ch.-127-par.-1005-35}~~.

(Source: Amended at 25 Ill. Reg. 674, effective January 1, 2001)

## Section 1101.100 Definitions

- a) Terms used in this Part ~~part~~ shall have the same meaning as in the Freedom of Information Act.
- b) "FOIA" means the Freedom of Information Act.
- c) "Requestor" means a person who submits a request for public records in accordance with this Part ~~part~~.
- d) "Undue burden" means those FOIA requests that ~~which~~, despite agency attempts to confer with the requestor to reduce his/her request to manageable size, either ~~continue~~ continues to lack requisite specificity and/or ~~disrupt~~ disrupts the duly undertaken work of the Department.

(Source: Amended at 25 Ill. Reg. 674, effective January 1, 2001)

## SUBPART B: PROCEDURES FOR REQUESTING PUBLIC RECORDS

## Section 1101.150 Person to Whom Requests are Submitted

Requests for public records shall be submitted to the FOIA Officer, ~~Chief~~

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~~Office--of--Communications~~, Department of Public Aid, 201 100 South Grand Avenue East, ~~Third--Floor~~, Springfield, Illinois 62763-0002 62762, and shall be designated "ATTN: FOIA Request."

(Source: Amended at 25 Ill. Reg. 874, effective January 1, 2001)

## Section 1101.200 Form and Content of Requests

- Requests in accordance with the FOIA and this Part shall be made in writing. Such requests may be submitted on FOIA request forms provided by the Department. (See Table A to this Part.)
- Oral requests will be handled expeditiously. However, the required response times and the appeal procedures contained in the FOIA and this Part do not apply to oral requests.
- The requestor shall provide the following information in a request for public records:
  - The requestor's full name, address and phone number.
  - A brief specific description of the public records sought, including if possible, an example of the document requested.
  - Whether the request is for inspection of public records, copies of public records, or both.

(Source: Amended at 25 Ill. Reg. 874, effective January 1, 2001)

SUBPART C: PROCEDURES FOR DEPARTMENT RESPONSE  
TO REQUESTS FOR PUBLIC RECORDS

## Section 1101.250 Timeline for Department Response

- The Department ~~Department's--Office-of--Communications~~ shall respond to a written request for public records within seven 7 working days after its receipt of such request.
- The Department ~~Office--of--Communications~~ may give notice of an extension of time to respond that which does not exceed an additional seven 7 working days. Such an extension is allowable only if written notice is provided within the original seven 7 working day time limit and only for the reasons provided in Section 3(d) of the FOIA [5 ILCS 140/3(d)]. Such notice of extension shall state the reasons why the extension is necessary and the date when by-which the records will be available or denial will be forthcoming. (~~See-Table-F--to--this--Part-for-form~~.)

(Source: Amended at 25 Ill. Reg. 874, effective January 1, 2001)

## Section 1101.300 Types of Department Responses

- The Department ~~Department's--Office-of--Communications~~ shall respond to a request for public records in one of four ways:

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- Approve the request. (~~See-Table-C-to-this-Part-for-form~~.)
- Approve in part ~~Part~~ and deny in part ~~Part~~. (~~See-Table-B-to-this-Part-for-form~~.)
- Deny the request. (~~See-Table-B-to-this-Part-for-form~~.)
- Notify the requestor of necessary delay in its processing, as provided in Section 3(e) 3(d) of the FOIA [5 ILCS 140/3(e)]. (~~See-Table-F-to-this-Part-for-form~~.)

b) Upon approval of a request for public records, the Department may either provide the materials immediately, give notice that the materials shall be made available upon payment of reproduction costs or give notice of the time and place for inspection of records.

c) A denial of a request for public records shall be made in writing. It shall state the reasons for the denial ~~in--accordance--with--either Section--3(f)--or--Section--7--of--the-FOIA~~ and the names and titles of individuals responsible for the decision. It shall also give notice of the requestor's right to appeal to the Director of the Department.

d) Categorical requests creating an undue burden upon the Department shall be denied only after extending to the requestor an opportunity to confer in an attempt to reduce the request to manageable proportions in accordance with Section ~~Sections~~ 3(f) of the FOIA [5 ILCS 140/3(f)].

e) Failure to respond to a written request within seven 7 working days may be considered by the requestor a denial of a request.

(Source: Amended at 25 Ill. Reg. 874, effective January 1, 2001)

## SUBPART D: PROCEDURES FOR APPEAL OF A DENIAL

## Section 1101.350 Appeal of a Denial

- A requestor whose request has been denied by the Department ~~Chief~~ ~~Office--of--Communications~~ may appeal the denial to the Director of the Department. The notice of appeal shall be made in writing and sent to:

Director of Department of Public Aid  
201 100 South Grand Avenue East, ~~Third--Floor~~  
Springfield, Illinois 62763-0002 62762  
ATTN: FOIA Appeal

- The notice of appeal shall include a copy of the original request, a copy of the denial received by the requestor, and a statement of the reasons why the appeal should be granted.

(Source: Amended at 25 Ill. Reg. 874, effective January 1, 2001)

## Section 1101.400 Director's Response to Appeal

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The Director shall respond to an appeal within seven 7 working days after receiving notice of the appeal ~~notice thereof~~. ~~(See table 6-to-this-part--for form.)~~ The Director shall either affirm the denial or provide access to the requested public records. Failure to respond within seven 7 working days may be considered by the requestor an affirmation of the denial.

(Source: Amended at 25 Ill. Reg. ~~3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~, effective January 1, 2001)

SUBPART E: PROCEDURES FOR PROVIDING PUBLIC RECORDS  
TO REQUESTORS

## Section 1101.450 Inspection of Records at Department Offices

- a) Generally, public records will be made available for inspection between 8:30 and 5:00, Monday through Friday, at ~~the--Office--of Communications~~, 201 499 South Grand Avenue East, ~~Third--Floor~~, Springfield, Illinois, 62763-0001 62762. For purposes of convenience, the Department may request that inspection take place in another Department office location.
- b) Documents which the requestor wishes to have copied shall be segregated during the course of the inspection. Generally, all copying shall be done by Department employees.
- c) An employee of the Department shall be present throughout the inspection. A requestor shall be prohibited from bringing bags, brief cases or other containers into the inspection room.

(Source: Amended at 25 Ill. Reg. ~~3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~, effective January 1, 2001)

## Section 1101.500 Copies of Public Records

- a) Copies of public records shall be provided to the requestor only upon payment of any charges which are due.
- b) Charges for copies of public records shall be assessed in accordance with the "Fee Schedule for Duplication of Public Records" attached as Table B to this Part.
- c) Waived or Reduced Charges
  - 1) Charges shall be waived if the requestor is a State agency, a constitutional officer, or a member of the General Assembly or if the response is fewer ~~less~~ than ten ~~10~~ pages in its original format.

## 2) Charges shall be reduced if:

- A) the requestor states the specific purpose for the request; and
- B) the requestor indicates that a reduction of the fees is in the public interest. A reduction of fees is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public

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and is not for the principal purpose of personal or commercial benefit.

(Source: Amended at 25 Ill. Reg. ~~3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~, effective January 1, 2001)

Section 1101.550 General Materials Available ~~from the Office of Communications~~

The Department ~~Office of Communications~~ shall make available to the public at no charge the following materials:

- a) A brief description of the organizational structure and budget of the Department;
- b) A brief description of the means for requesting information and public records; and
- c) A list of types and categories of public records maintained by the Department.

(Source: Amended at 25 Ill. Reg. ~~3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~, effective January 1, 2001)



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## Section 1101.TABLE A Request for Public Records

TO: FOIA Officer  
Chief, Office of  
Communications  
Department of Public Aid  
201 100 South Grand Avenue East  
Third Floor  
Springfield, Illinois 62763-000262762  
ATTN: FOIA Request

FROM: \_\_\_\_\_  
NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
PHONE NUMBER \_\_\_\_\_

## DESCRIPTION OF REQUESTED RECORD(S):

Please indicate if you wish to inspect the above captioned records or wish a copy of them:

\_\_\_\_\_ Inspection \_\_\_\_\_ Copy \_\_\_\_\_ Both \_\_\_\_\_

## FOR OFFICE USE ONLY:

Date Received \_\_\_\_\_ Date Response Due \_\_\_\_\_  
(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective January 1, 2001)

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## Section 1101.TABLE B Fee Schedule for Duplication of Public Records

Type of Duplication	Per Copy Charge
Paper copy from paper original	\$ .25 or reduced
Standard 8 1/2" x 11" and legal size 8 1/2" x 14"	to \$.15 if the request is in the public interest (see Section 1101.500).

The Department also possesses records in other forms including microfiche, ~~as computer printouts, microfilm, film, and prints~~. A duplication charge for such records will be assessed based upon the actual ~~commercial~~ cost of reproduction.

Some records possessed by the Department are in book or pamphlet form. Charge may be assessed for such materials based upon the cost of such materials incurred by the Department.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective January 1, 2001)

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Section 1101.TABLE C Approval of Request for Public Records (Repealed)

TO: FROM: Chief, Office of Communications  
Name Department of Public Aid  
Address 100 South Grand Avenue  
East Third Floor  
Springfield, Illinois 62762  
Phone Number

DESCRIPTION OF REQUESTED RECORDS:

Your request received for the above captioned records has been approved.  
The documents you requested are enclosed.  
The documents will be made available upon payment of copying costs in the amount of \$7.40, effective January 1, 2001.  
You may inspect the records at \_\_\_\_\_ on \_\_\_\_\_ date \_\_\_\_\_

Chief, Office of Communications Date

(Source: Repealed at 25 Ill. Reg. 67.4, effective January 1, 2001)

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Section 1101.TABLE D Denial of Request for Public Records (Repealed)

TO: FROM: Chief, Office of Communications  
Name Department of Public Aid  
Address 100 South Grand Avenue East  
Third Floor  
Springfield, Illinois 62762  
Phone Number

DESCRIPTION OF REQUESTED RECORDS:

Your request dated for the above captioned records has been denied.  
The request creates an undue burden on the public body in accordance with Section 3(f) of the Freedom of Information Act, and we were unable to negotiate a more reasonable request.  
The materials requested are exempt under Section 7 of the Freedom of Information Act for the following reasons:  
The individuals who have reached the determination that the records you have requested are to be denied are:

- 1. (Name and title)
- 2. (Name and title)

You have the right to appeal the denial of the records you have requested to the Director of this Department by submitting a written notice of appeal to:

Director  
Department of Public Aid  
100 South Grand Avenue East  
Third Floor  
Springfield, Illinois 62762  
ATTN: POA Appeal

In submitting your notice of appeal, you should include copies of your original

DEPARTMENT OF PUBLIC AID  
NOTICE OF ADOPTED AMENDMENTS

Section 1101. TABLE E Partial Approval of Request for Public Records (Repealed)

FROM: Chief, Office of Communications  
Department of Public Aid  
100 South Grand Avenue  
East Third Floor  
Springfield, Illinois 62762

TO: Chief, Office of Communications  
Department of Public Aid  
100 South Grand Avenue  
East Third Floor  
Springfield, Illinois 62762

DESCRIPTION OF REQUESTED RECORDS:

Your request received for the above captioned records has been partially approved. Those parts of your request which have been approved are enclosed. Will be made available upon payment of copying costs in the amount of \$ .

may be inspected at \_\_\_\_\_ on \_\_\_\_\_ (date)

The following portions of your request have been denied for the reasons cited: The individuals who have reached the determination that the records you have requested are to be denied are:

- 1. (Name and Title)
- 2. (Name and Title)

You have the right to appeal the denial of the records you have requested to the Director of this Department by submitting a written notice of appeal to:

Director  
Department of Public Aid  
100 South Grand Avenue East  
Third Floor, Springfield, Illinois 62762

DEPARTMENT OF PUBLIC AID  
NOTICE OF ADOPTED AMENDMENTS

request--and--this--denial--and--state--any--reasons--why--your--appeal--should--be--granted.

Chief, Office of Communications Date 6 7 4 1974 effective January 1, 2001

(Source: Repealed at 25 Ill. Reg. 674, effective January 1, 2001)

DEPARTMENT OF PUBLIC AID

NOTICE OF ADOPTED AMENDMENTS

Amend--FOIA-Appeal

in-submitting-your-notice-of-appeal-you-should-include-copies-of-your-original request--and--this--denial--and--state--any--reasons-why-your-appeal-should-be granted:

Chief--Office-of-Communications

Date

(Source: Repealed at 25 Ill. Reg. 674, effective January 1, 2001)

DEPARTMENT OF PUBLIC AID

NOTICE OF ADOPTED AMENDMENTS

Section 1101.TABLE F Deferral of Response to Request for Public Records (Repealed)

TO:

FROM:

Chief--Office-of-Communications

Department-of-Public-Aid

Address

100-South-Grand-Avenue

East--Third-Floor

Springfield-Illinois--62762

Phone-Number

DESCRIPTION-OF-REQUESTED-RECORDS:

The-response-to-your-request-received--for-the-above-captioned records--must--be--delayed--The-delay-in-responding-to-your-request-is-for-the following-reasons{:

{Provide-reason-for-delay-in--accordance-with--Section--3(d)--of--the FOIA.}

You-will-be-notified-by--(date)--as-to-the-action-taken-on your-request:

Chief--Office-of-Communications

Date

(Source: Repealed at 25 Ill. Reg. 674, effective January 1, 2001)

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

## Section 1101. TABLE C FOIA Appeal Director's Response (Repealed)

TO: PRGM:-----  
Name: Director-----  
Address: Department of Public Aid-----  
100 South Grand Avenue-----  
East, Third Floor-----  
Springfield, Illinois--62762-----  
Phone Number:-----

## DESCRIPTION OF REQUESTED RECORDS:

Noted below is the action I have taken on your appeal from the denial of your request for the above-captioned records:

I hereby approve your appeal to the following extent and for the following reasons:

I affirm the denial of your request made by the Chief, Office of Communications.

You are entitled to judicial review of any denial pursuant to Section 11 of the Freedom of Information Act:

Director

Date: 6/7/80

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective January 1, 2001)

## ILLINOIS AFFORDABLE HOUSING PROGRAM

## NOTICE OF PUBLIC INFORMATION

## ANNUAL PLAN OF THE ADVISORY COMMISSION

The Illinois Affordable Housing Act (310 ILCS 65/1 et seq. the "Act") established the Illinois Affordable Housing Program (the "Program") to provide affordable housing to low and very low income persons and families. The Act established the Illinois Affordable Housing Trust Fund (the "Trust Fund") within which is deposited 50% of the collections from the State real estate transfer tax. The Trust Fund monies fund the Program.

Funds are distributed and made available under the Program through two subprograms. The Housing Trust Fund ("HTF") Program which has been in operation since the establishment of the Program provides subordinate gap financing or grants in a maximum amount of generally not to exceed \$1,500,000 per applicant per year. In 1994, the Authority created the Trust Fund Bond (TFB) Program. The TFB Program was created by leveraging Trust Fund monies to securitize and collateralize private taxable bond issues. The Bonds were sold in two funds. Funds from the sale of the bonds were then used to provide first mortgage loans to eligible developers of multi-family developments. No additional Bond sales are planned.

The Act creates an Advisory Commission (the "Commission") to advise the Illinois Housing Development Authority (the "Authority") as to the operation of the Program. The Act provides that the Commission carry out certain responsibilities, including, the development and publication of a plan. Section 17(a) of the Act requires the Commission to prepare and publish in the Illinois Register a plan which describes the available resources to the Program, the application process for the Program, and the initial priorities for expenditure of the available resources. Pursuant to Section 17(a) of the Act, the Advisory Commission to the Illinois Affordable Housing Program has prepared the following plan.

## I. Available Resources

Based on a review of the program and projections by the Illinois Department of Revenue, the monies available to be spent on the Program in fiscal year 2000 shall be approximately \$40 million. Of the total monies available, approximately \$5.3 million has been pledged to the TFB Program.

## II. Application Process

The applicant must first complete an application form created by the Authority. The application requests, among other things, the following information:

a. A general description of the proposed project.



## ILLINOIS AFFORDABLE HOUSING PROGRAM

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- b. The total number of units, total number of low and very low income units, unit size and mix, and the respective rents or purchase prices to be charged.
- c. A breakdown of the project budget's uses and sources.
- d. A development plan which outlines the project's completion schedule and identifies the project's participants and anticipated funding sources.
- e. The background, housing experience, and financial status of the applicant.

The Authority charges a \$250 application fee to non-profit organizations and \$500 to for-profits which must accompany the HTF application.

After the applicant submits the application, the Authority will review it to determine whether the project, as proposed, satisfies the purposes and requirements of the Act and the Rules promulgated thereunder. The Authority will notify the applicant within approximately 30 days if the application fails to meet these requirements. If the application meets these basic requirements the Authority staff, in cooperation with the applicant, will establish and obtain the additional information necessary to properly evaluate the project. The Authority staff will then analyze the project's feasibility. Based on this analysis, the Authority will make its recommendation to the Commission. Prior to the Commission review, the Authority will notify parties interested in the application, including local officials, of the details of the project. The recommendations of the Authority staff together with those of the Commission will then be presented to the Authority's Board of Directors (the "Board") for approval consideration. Upon approval by the Board, the Authority staff will deliver a conditional commitment to the applicant.

### III. Priorities

The following statement represents the initial priorities for the evaluation of program applications. The priorities and goals stated below represent guidelines to be followed in evaluating applications and are not intended to be exhaustive. The Commission may modify these priorities and goals as the program evolves.

- a. Priority should be given to those HTF applications which demonstrate that the applicant has explored and exhausted other available public and private resources.

## ILLINOIS AFFORDABLE HOUSING PROGRAM

## NOTICE OF PUBLIC INFORMATION

## ANNUAL PLAN OF THE ADVISORY COMMISSION

- b. Priority should be given to those projects which provide the most affordable housing for the longest period of time, with a goal of ensuring that some Trust Fund monies be directed to the lowest income population.
- c. The Program should ensure an equitable distribution of Trust Fund monies across the State by establishing a goal of funding a proportionate number of units in the Chicago metropolitan area, other metropolitan areas and rural areas as compared to those area's percentage of State population.

## DEPARTMENT OF AGRICULTURE

## JANUARY 2001 REGULATORY AGENDA

- a) Part(s) (Heading and Code Citation): Illinois Noxious Weed Law, 8 Ill. Adm. Code 220

1) Rulemaking:

A) Description: The Department is proposing to add kudzu (*Pueraria lobata*) to the list of Illinois Noxious Weeds. It has been declared a federal noxious weed and a new initiative in Illinois to eradicate it is about to start. Adding this plant to the state list will raise the awareness of the problem and allow county weed superintendents to include kudzu control in their annual noxious weed control plans.

B) Statutory Authority: Illinois Noxious Weed Law [505 ILCS 100/4]

C) Scheduled meeting/hearing date: Written comments may be submitted during the 45-day public comment period following publication of the proposed rule in the *Illinois Register*. A public hearing will be held near the end of the public comment period.

D) Date Agency anticipates First Notice: March 2001

E) Effect on small businesses, small municipalities or not for profit corporations: This rulemaking will have little effect on municipalities, small businesses, or not for profit corporations. Entities may benefit due to the elimination of this invasive species. Through an interagency agreement proposed by Illinois Department of Natural Resources, IDNR will bear the cost of kudzu eradication treatments.

F) Agency contact person for information:

Scott Frank  
Illinois Department of Agriculture  
P. O. Box 19281  
Springfield, IL 62794-9281  
217/785-2427  
217/524-4882 (fax)

G) Related rulemakings and other pertinent information: None

- b) Part(s) (Heading and Code Citation): Land Application Authorization Program, 8 Ill. Adm. Code 258

1) Rulemaking:

A) Description: As a result of the development of rules at 8 Ill.

## DEPARTMENT OF AGRICULTURE

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- Adm. Code 259, Agrichemical Facility Response Action Program, remediation suitability determination levels for several pesticides listed in Part 258 need to be changed. The changes will provide consistency between these two related rules.

B) Statutory Authority: Illinois Pesticide Act [415 ILCS 60/19]

C) Scheduled meeting/hearing date: Written comments may be submitted during the 45-day public comment period following publication of the proposed rule in the *Illinois Register*. A public hearing will be held near the end of the public comment period.

D) Date Agency anticipates First Notice: March 2001

E) Effect on small businesses, small municipalities or not for profit corporations: This rulemaking will have no effect on municipalities or not-for-profit corporations. The consistency of rules provided by this rulemaking will benefit small businesses such as agrichemical facilities.

F) Agency contact person for information:

Warren Goetsch  
Illinois Department of Agriculture  
P.O. Box 19281  
Springfield, IL 62794-9281  
217/785-4233  
FAX: 217/524-4882

G) Related rulemakings and other pertinent information: The rules for the Agrichemical Facility Response Action Program, 8 Ill. Adm. Code 259, are related to this rulemaking. Part 259 is anticipated to go to first notice in August 2000.

- c) Part(s) (Heading and Code Citation): Agrichemical Facility Response Action Program, 8 Ill. Adm. Code 259

1) Rulemaking:

A) Description: Retail agrichemical facilities conducting remediation activities of soil or groundwater contamination from pesticide releases may opt to request a written approval from the Department of Agriculture for the voluntary site assessment and corrective action. The owner or operator of the facility can apply for Department review and approval for plans and reports detailing the scope and implementation of the environmental response actions. Upon successful completion of the pesticide

## DEPARTMENT OF AGRICULTURE

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release cleanup and remediation, the Department shall issue a notice of closure indicating that site specific cleanup objectives have been met and no further remedial action is required to remedy the pesticide release pursuant to the Illinois Pesticide Act [415 ILCS 60/19.3].

- B) Statutory Authority: Illinois Pesticide Act [415 ILCS 60/19]
- C) Scheduled meeting/hearing date: Written comments may be submitted during the 45-day public comment period following publication of the proposed rule in the *Illinois Register*. A public hearing will be held near the end of the public comment period.
- D) Date Agency anticipates First Notice: February 2001
- E) Effect on small businesses, small municipalities or not for profit corporations: This rulemaking will have no effect on municipalities or not-for-profit corporations. Small businesses, such as some types of agricultural facilities, will benefit from the remediation option allowed by these rules.

F) Agency contact person for information:

Warren Goetsch  
Illinois Department of Agriculture  
P.O. Box 19281  
Springfield, IL 62794-9281  
217/785-4233  
FAX: 217/524-4882

- G) Related rulemakings and other pertinent information: The rules for the Land Application Authorization Program, 8 Ill. Adm. Code 258, are related to this rulemaking.

d) Part(s) (Heading and Code Citation): As yet unknown1) Rulemaking:

- A) Description: The Illinois Rivers-Friendly Farmer Program Act authorizes farmers to submit a written application to the Illinois Department of Agriculture to gain the Illinois Rivers-Friendly Farmer designation. The designation demonstrates that farmers are using environmentally sound farming practices which benefit Illinois' rivers. This is the first rulemaking since the passage of the legislation.

B) Statutory Authority: Illinois Rivers-Friendly Farmer Program

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Act-HB 2605

- C) Scheduled meeting/hearing date: No dates scheduled

D) Date Agency anticipates First Notice: April 2001

- E) Effect on small businesses, small municipalities or not for profit corporations: No impacts expected

F) Agency contact person for information:

Steve Chard  
Illinois Department of Agriculture  
P.O. Box 19281  
Springfield, IL 62794-9281  
217/782-6297  
FAX: 217/557-0993

- G) Related rulemakings and other pertinent information: None

e) Part(s) (Heading and Code Citation): Farmland Preservation Act, 8 Ill. Adm. Code 7001) Rulemaking:

- A) Description: The Farmland Preservation Act requires that state agency policy statements and working agreements on farmland preservation shall be updated by the state agency and reviewed and approved by the Department of Agriculture every three years. The purpose of the rulemaking activity is to update the policy statements and working agreements, as necessary, to protect Illinois' agricultural land base from needless state agency farmland conversion impacts.

B) Statutory Authority: Farmland Preservation Act [505 ILCS 75/1-8]

- C) Scheduled meeting/hearing date: No dates scheduled

D) Date Agency anticipates First Notice: April 2001

- E) Effect on small businesses, small municipalities or not for profit corporations: No impacts anticipated.

F) Agency contact person for information:

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James R. Hartwig  
Illinois Department of Agriculture  
P.O. Box 19281  
Springfield, IL 62794-9281  
217/782-6297  
FAX: 217/557-0993

G) Related rulemakings and other pertinent information: None

f) Part(s) (Heading and Code Citation): Swine Disease Control and Eradication Act, 8 Ill. Adm. Code 105

1) Rulemaking:

A) Description: The Department will only recognize the status of Qualified Pseudorabies Negative and Controlled Vaccinated Herds from Stage III states if the herd is doing monthly testing. The Department will adopt the updated version of the Pseudorabies Eradication State-Federal-Industry Program Standards, if a new version is published in early 2001. Regulations regarding the importation of feral swine will be reviewed to determine if more stringent testing requirements for feral swine need to be implemented. Additional restrictions may be placed on swine entering Illinois from Stage I or II states, including, but not limited to requiring pre-approval of the shipment before a permit can be issued. Pre-approval would be granted only by the Director, or his or her designated representative. Section 105.110 was added on November 1, 2000 establishing the Voluntary Porcine Reproductive and Respiratory Disease (PRRS) Monitored Herd program. Since this is a new program, some changes may be necessary.

B) Statutory Authority: Illinois Swine Disease Control and Eradication Act [510 ILCS 100/1/1]; Illinois Pseudorabies Control Act [510 ILCS 90/1]; and Illinois Swine Brucellosis Eradication Act [510 ILCS 95/1]

C) Scheduled meeting/hearing date: It is anticipated that the Department will convene a meeting of the Advisory Board of Livestock Commissioners in late spring or early summer.

D) Date Agency anticipates First Notice: Late Spring

E) Effect on small businesses, small municipalities or not for profit corporations: Additional testing may be required for producers exporting swine into Illinois. There will be no effect on Illinois swine producers.

## DEPARTMENT OF AGRICULTURE

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F) Agency contact person for information:

Dr. Richard Hull  
Illinois Department of Agriculture  
P.O. Box 19281  
Springfield, IL 62794-9281  
217/782-4944  
FAX: 217/524-7702

G) Related rulemakings and other pertinent information: None

g) Part(s) (Heading and Code Citation): Illinois Pseudorabies Control Act, 8 Ill. Adm. Code 115

1) Rulemaking:

A) Description: The Department will update all cites to the CFR and the Pseudorabies Eradication State-Federal-Industry Program Standards, if new editions are available. The Department will change the testing requirement for feeder swine entering Illinois from Stage III states or areas to have a monitoring test within the past 30 days.

B) Statutory Authority: Illinois Pseudorabies Control Act [510 ILCS 90/1]

C) Scheduled meeting/hearing date: It is anticipated that the Department will convene a meeting of the Advisory Board of Livestock Commissioners in late spring or early summer.

D) Date Agency anticipates First Notice: Late Spring

E) Effect on small businesses, small municipalities or not for profit corporations: No effect on Illinois businesses

F) Agency contact person for information:

Dr. Richard Hull  
Illinois Department of Agriculture  
P.O. Box 19281  
Springfield, IL 62794-9281  
217/782-4944  
FAX: 217/524-7702

G) Related rulemakings and other pertinent information: None

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- h) Part(s) (Heading and Code Citation): Illinois Bovidae and Cervidae Tuberculosis Eradication Act, 8 Ill. Adm. Code 80

1) Rulemaking:

- A) Description: The regulation regarding testing requirements for bison entering Illinois will be revised to require that bison from accredited-free states either originate from an accredited-free herd or have an individual test within 30 days of importation, and bison originating from non-accredited free states will be required to originate from herds where a complete herd test has been conducted within the past two years, and the animals being imported have had two individual tests 180 and 30 days prior to importation. Feeder cattle entering Illinois from non-accredited states will be required to originate from a herd where a complete negative herd test has been conducted within the past year, and the individual animals have a negative test within 30 days of importation.

- B) Statutory Authority: Illinois Bovidae and Cervidae Tuberculosis Eradication Act [510 ILCS 35/1]

- C) Scheduled meeting/hearing date: It is anticipated that the Department will convene a meeting of the Advisory Board of Livestock Commissioners in late spring or early summer.

- D) Date Agency anticipates First Notice: Late Spring

- E) Effect on small businesses, small municipalities or not for profit corporations: No effect on Illinois businesses

- F) Agency contact person for information:

Dr. Richard D. Hull  
Illinois Department of Agriculture  
P.O. Box 19281  
Springfield, IL 62794-9281  
217/782-4944  
FAX: 217/524-7702

- G) Related rulemakings and other pertinent information: Finalizing emergency rulemaking that became effective June 15, 2000

- i) Part(s) (Heading and Code Citation): Diseased Animals, 8 Ill. Adm. Code 85

1) Rulemaking:

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- A) Description: All references to the CFR will be updated to the most recent edition and any new editions of the Brucellosis Uniform Methods and Rules, the Voluntary Scrapie Flock Certification Program, the Voluntary John's Disease Herd Status Program, or the National Paratuberculosis Certification Program, if published. Herds that have been restricted due to John's disease will have the restrictions removed if the herd enrolls in the Voluntary Paratuberculosis (John's Disease) Risk Management program. The scrapie program will be revised to make Illinois as consistent state under the U.S. Department of Agriculture's scrapie program. This will include the requirement that Illinois goats and sheep be individually identified when moving into or within the state, and a health certificate issued within 30 days for Illinois sheep and goats changing ownership or being exhibited with the state. Movement restrictions will be established for animals originating from source or infected flocks, or designated as high-risk animals. Restrictions will be adopted regarding the movement of cervids into and within Illinois from herds where Chronic Wasting Disease (CWD) has been diagnosed within the last 60 months, and develop a CWD herd monitoring program. A statement on the import health certificate regarding the CWD status of the herd will be required.

- B) Statutory Authority: Illinois Diseased Animals Act [510 ILCS 50/1]; Section 6 of the Illinois Bovine Brucellosis Eradication Act [510 ILCS 30/6]; Livestock Auction Market Law [225 ILCS 640/1]; and Equine Infectious Anemia Control Act [510 ILCS 65]

- C) Scheduled meeting/hearing date: It is anticipated that the Department will convene a meeting of the Advisory Board of Livestock Commissioners in late spring or early summer.

- D) Date Agency anticipates First Notice: Late Spring

- E) Effect on small businesses, small municipalities or not for profit corporations: Herds restricted for John's disease will have an alternative method for having the movement restrictions lifted. Sheep and goat owners moving their animals within the state will be required to obtain a health certificate from an accredited veterinarian prior to movement. This health certificate is valid for 30 days. Also, all sheep and goats moving in Illinois will be required to have a unique identification. Herds with a positive diagnosis of Chronic Wasting Disease (CWD) will be restricted in movement and herd owners will be required to develop a monitoring program for their herd.

- F) Agency contact person for information:



## DEPARTMENT OF AGRICULTURE

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Dr. Richard D. Hull  
 Illinois Department of Agriculture  
 P.O. Box 19281  
 Springfield, IL 62794-9281  
 217/782-4944  
 FAX: 217/524-7702

G) Related rulemakings and other pertinent information: None

j) Part(s) (Heading and Code Citation): Animal Disease Laboratories Act, 8 Ill. Adm. Code 110

1) Rulemaking:

A) Description: The Department and the University of Illinois Veterinary Diagnostic Laboratory are in the process of reviewing the fees and will be amending many of the charges.

B) Statutory Authority: Animal Disease Laboratories Act [510 ILCS 10/1]

C) Scheduled meeting/hearing date: It is anticipated that the Department will convene a meeting of the Advisory Board of Livestock Commissioners in late spring or early summer.

D) Date Agency anticipates First Notice: Late Spring

E) Effect on small businesses, small municipalities or not for profit corporations: Veterinarians and persons using the diagnostic facilities at the animal diagnostic laboratories operated by the Illinois Department of Agriculture.

F) Agency contact person for information:

Dr. Richard D. Hull  
 Illinois Department of Agriculture  
 P.O. Box 19281  
 Springfield, IL 62794-9281  
 217/782-4944  
 FAX: 217/524-7702

G) Related rulemakings and other pertinent information: None

k) Part(s) (Heading and Code Citation): Livestock Auction Markets, 8 Ill. Adm. Code 40

## DEPARTMENT OF AGRICULTURE

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a) Rulemaking

A) Description: All sheep and goats moving through auction markets will be required to be uniquely identified. Markets will be required to keep track of the identification of these animals, along with information regarding the seller and purchaser. These records must be submitted to the Department on a weekly basis. These requirements are in response to the need to be able to trace sheep and goats to the flock of origin due to the incidence of scrapie.

B) Statutory Authority: Livestock Auction Market Law [225 ILCS 640 et seq.]

C) Scheduled meeting/hearing date: It is anticipated that the Department will convene a meeting of the Advisory Board of Livestock Commissioners in late spring or early summer.

D) Date Agency anticipates First Notice: Late Spring

E) Effect on small businesses, small municipalities or not for profit corporations: Auction market operators will be required to keep records on all sheep and goats moving through the market, and tag any animals not already identified. Records must be submitted to the Department on a weekly basis.

F) Agency contact person for information:

Dr. Richard Hull  
 Illinois Department of Agriculture  
 P. O. Box 19281  
 Springfield, IL 62794-9281  
 217/782-4944  
 217/524-7702 (fax)

G) Related rulemakings and other pertinent information: None

l) Part(s) (Heading and Code Citation): Livestock Dealer Licensing, 66 Ill. Adm. Code 610

1) Rulemaking:

A) Description: Goats will be added to Sections 610.40 and 610.60. Records regarding the purchase of sheep and goats will be required to be mailed to the Department weekly. This requirement is in response to the need to be able to trace sheep and goats to the flock of origin due to the incidence of scrapie.

## DEPARTMENT OF AGRICULTURE

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B) Statutory Authority: Illinois Livestock Dealer Licensing Act [225 ILCS 645/1 et seq.]

C) Scheduled meeting/hearing date: It is anticipated that the Department will convene a meeting of the Advisory Board of Livestock Commissioners in late spring or early summer.

D) Date Agency anticipates First Notice: Late Spring

E) Effect on small businesses, small municipalities or not for profit corporations: Dealers will be required to submit records regarding the purchase of sheep and goats to the Department on a weekly basis.

F) Agency contact person for information:

Dr. Richard Hull  
Illinois Department of Agriculture  
P. O. Box 19281  
Springfield, IL 62794-9281  
217/782-4944  
217/524-7702 (fax)

G) Related rulemakings and other pertinent information: None

m) Part(s) (Heading and Code Citation): Dead Animal Disposal Act, 8 Ill. Adm. Code 90

1) Rulemaking:

A) Description: Section 90.110 will be amended to add a requirement that all persons operating composting facilities for the disposal of dead animals must record the location of the compost with the Department and make the compost available for inspection.

B) Statutory Authority: Illinois Dead Animal Disposal Act [225 ILCS 610]

C) Scheduled meeting/hearing date: It is anticipated that the Department will convene a meeting of the Advisory Board of Livestock Commissioners in late spring or early summer.

D) Date Agency anticipates First Notice: Late Spring

E) Effect on small businesses, small municipalities or not for profit corporations: Persons operating a compost for the disposal of dead animals would be required to record the location of the

## DEPARTMENT OF AGRICULTURE

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composter with the Department and make the facility available for inspection.

F) Agency contact person for information:

Dr. David Bromwell  
Illinois Department of Agriculture  
P.O. Box 19281  
Springfield, IL 62794-9281  
217/782-6657  
FAX: 217/524-7702

G) Related rulemakings and other pertinent information: None

n) Part(s) (Heading and Code Citation): Animal Welfare Act, 8 Ill. Adm. Code 25

1) Rulemaking:

A) Description: Regulations will be developed governing boarding facilities known as "day care" centers for animals.

B) Statutory Authority: Animal Welfare Act [225 ILCS 605] and the Illinois Diseased Animals Act [510 ILCS 50]

C) Scheduled meeting/hearing date: It is anticipated that the Department will convene a meeting of the Advisory Board of Livestock Commissioners in late spring or early summer.

D) Date Agency anticipates First Notice: Late Spring

E) Effect on small businesses, small municipalities or not for profit corporations: Persons operating boarding facilities known as "day care" facilities for animals will be required to meet certain requirements to operate these types of facilities.

F) Agency contact person for information:

Dr. David Bromwell  
Illinois Department of Agriculture  
P.O. Box 19281  
Springfield, IL 62794-9281  
217/782-6657  
FAX: 217/524-7702

G) Related rulemakings and other pertinent information: None

## DEPARTMENT OF AGRICULTURE

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- o) Part(s) (Heading and Code Citation): Motor Fuel Standards Act, 8 Ill. Adm. Code 850

1) Rulemaking:

A) Description: This Part will be amended to delete procedures for charging consumers when motor fuel samples are analyzed to be consistent with changes made to the Act.

B) Statutory Authority: Motor Fuel Standards Act [815 ILCS 370]

C) Scheduled meeting/hearing dates: Written comments may be submitted during the 45-day public comment period following publication of proposed rulemaking in the *Illinois Register*.

D) Date Agency anticipates First Notice: April 2001

E) Effect on small businesses, small municipalities or not for profit corporations: No adverse impact is anticipated

F) Agency contact person for information:

Sid Colbrook  
Illinois Department of Agriculture  
State Fairgrounds  
Springfield, IL 62794-9281  
217/782-3817  
FAX: 217/524-7801

G) Related rulemakings and other pertinent information: None

- p) Part(s) (Heading and Code Citation): Egg and Egg Products Act, 8 Ill. Adm. Code 65

1) Rulemaking:

A) Description: The United States Department of Agriculture (USDA) has issued a prohibition on the repackaging of eggs packed under USDA's voluntary grading program. Amendments will be made relating to the enforcement of the Illinois Egg and Egg Products Act to follow USDA's standards that eggs sold for human consumption cannot be repackaged. The rules will be amended to clarify that the 30 day expiration date should be marked on each carton of eggs.

B) Statutory Authority: Illinois Egg and Egg Products Act [410 ILCS 615]

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- C) Scheduled meeting/hearing date: Written comments may be submitted during the 45-day public comment period following publication of proposed rulemaking in the *Illinois Register*.

D) Date Agency anticipates First Notice: April 2001

E) Effect on small businesses, small municipalities or not for profit corporations: Egg packagers and distributors will not be able to regrade and repack older eggs. It is seldom that eggs are repackaged and resold to consumers. This amendment will insure that eggs being sold for human consumption are fresh.

F) Agency contact person for information:

Sid Colbrook  
Illinois Department of Agriculture  
State Fairgrounds  
Springfield, IL 62794-9281  
217/782-3817  
FAX: 217/524-7801

G) Related rulemakings and other pertinent information: None

- q) Part(s) (Heading and Code Citation): Weights and Measures Act, 8 Ill. Adm. Code 600

1) Rulemaking:

A) Description: The National Type Evaluation Program has been adopted as the standards for new weighing and measuring devices. Procedures need to be implemented to provide device users and installers information regarding the installation or transfer of weighing and measuring devices. Pursuant to the Illinois Weights and Measures Act, the Department collects fees for device inspections. There are some devices such as mass flow meters that do not have an established inspection fee. Amendments to this Part will add fees for all devices being inspected by the Department that are not included in the current fee schedule.

B) Statutory Authority: Weights and Measures Act [225 ILCS 470]

C) Scheduled meeting/hearing date: Written comments may be submitted during the 45-day public comment period following publication of proposed rulemaking in the *Illinois Register*.

D) Date Agency anticipates First Notice: April 2001

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**E) Effect on small businesses, small municipalities or not for profit corporations:** This rulemaking will: 1) give businesses and service personnel direction about the installation and transfer of a weighing or measuring device; and 2) establish fees for businesses to test and certify weighing and measuring devices not currently included in the fee schedule.

**F) Agency contact person for information:**

Sid Colbrook  
Illinois Department of Agriculture  
State Fairgrounds  
Springfield, IL 62794-9281  
217/782-3817  
FAX: 217/524-7801

**G) Related rulemakings and other pertinent information:** None

**r) Part(s) (Heading and Code Citation):** Administrative Rules (Formal Administrative Proceedings; Contested Cases; Petitions; Public Disclosure), 8 Ill. Adm. Code 1

## 1) Rulemaking:

**A) Description:** The Department's procedural rules will be updated, including adding a provision establishing a fee for any party requesting a copy of an administrative hearing transcript, and reorganized.

**B) Statutory Authority:** Sections 5-10, 5-145, 10-5, 10-10, 10-15, 10-20, 10-25, 10-30, 10-35, 10-40, 10-50, and 10-60 of the Illinois Administrative Procedure Act [5 ILCS 100/5-10, 5-145, 10-5, 10-10, 10-15, 10-20, 10-25, 10-30, 10-35, 10-40, 10-50, and 10-60] and the Freedom of Information Act [5 ILCS 140]

**C) Scheduled meeting/hearing date:** Written comments may be submitted during the 45-day public comment period following publication of proposed rulemaking in the *Illinois Register*.

**D) Date Agency anticipates First Notice:** April 2001

**E) Effect on small businesses, small municipalities or not for profit corporations:** Any party requesting a copy of an administrative hearing transcript will be responsible for the costs associated with the transcription.

**F) Agency contact person for information:**

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Cynthia Ervin  
Illinois Department of Agriculture  
P. O. Box 19281  
Springfield, IL 62794-9281  
217/785-4507  
FAX: 217/785-4505

**G) Related rulemakings and other pertinent information:** None

**s) Part(s) (Heading and Code Citation):** Freedom of Information Act, 2 Ill. Adm. Code 701

## 1) Rulemaking:

**A) Description:** Amendments to this Part will update these rules in accordance with statutory amendments. The fee schedule in Section 701.140 will also be amended and updated.

**B) Statutory Authority:** Freedom of Information Act [5 ILCS 140]

**C) Scheduled meeting/hearing date:** None

**D) Date Agency anticipates First Notice:** First Notice publication is not required under this Part.

**E) Effect on small businesses, small municipalities or not for profit corporations:** There will be an increase in duplication costs for those requesting copies under the FOIA.

**F) Agency contact person for information:**

Cynthia Ervin  
Illinois Department of Agriculture  
P. O. Box 19281  
Springfield, IL 62794-9281  
217/785-4507  
FAX: 217/785-4505

**G) Related rulemakings and other pertinent information:** None

**t) Part(s) (Heading and Code Citation):** Illinois State Fair, and DuQuoin State Fair, Non-Fair Space Rental and the General Operation of the State Fairgrounds, 8 Ill. Adm. Code 270

## 1) Rulemaking:

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A) Description: New regulations will be developed regarding advertising in State Fair publications [20 ILCS 210/6]. Amendments to "Facility Availability" (Section 270.420) will be amended to facilitate additional rentals to maximize income throughout the non-fair season. A clarification is needed to further explain the Department's policy of allowing last year's lessees to have first right to the same dates in subsequent years in Section 270.380 concerning "Application for Space".

B) Statutory Authority: State Fair Act [20 ILCS 210] and Section 40.14 and Section 16 of the Civil Administrative code of Illinois [20 ILCS 5/16 and 40.14]

C) Scheduled meeting/hearing date: Written comments may be submitted during the 45-day public comment period following publication of proposed rulemaking in the *Illinois Register*.

D) Date Agency anticipates First Notice: April 2001

E) Effect on small businesses, small municipalities or not for profit corporations: This rulemaking will affect those wishing to rent space/buildings on the fairgrounds and those advertising in fair publications.

F) Agency contact person for information:

Bud Ford  
Illinois Department of Agriculture  
P. O. Box 19281  
Springfield, IL 62794-9281  
217/782-0771  
FAX: 217/782-9115

G) Related rulemakings and other pertinent information: None

u) Part(s) (Heading and Code Citation): Meat and Poultry Inspection Act, 8 Ill. Adm. Code 125

1) Rulemaking:

A) Description: Expanding provisions for existing Section 125.141 by requiring all licensed plants, Type I and Type II, to operate and maintain Sanitation SOP at all times.

B) Statutory Authority: Meat and Poultry Inspection Act [225 ILCS 650] and Section 16 of the Civil Administrative Code of Illinois [20 ILCS 5/16]

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C) Scheduled meeting/hearing dates: None at this time

D) Date Agency anticipates First Notice: April 2001

E) Effect on small businesses, small municipalities or not for profit corporations: All Type I establishments are operating under provisions of Sanitation SOP since October 1, 1997. Currently the recordkeeping requirement is limited to operations conducted under inspection. Due to increase in numbers for operations conducted outside of official hours, but still involving meat and poultry products, becomes necessary to expand existing requirements for providing uniform sanitation procedures. Only 8% of very small businesses (Type II) will be required to adopt these rules. The Department will provide guidance and assistance during implementation process.

F) Agency contact person for information:

Dr. Kris Mazurczak  
Illinois Department of Agriculture  
State Fairgrounds  
Springfield, IL 62794-9281  
217/782-3817  
FAX: 217/524-7801

G) Related rulemakings and other pertinent information: None

v) Part(s) (Heading and Code Citation): Fairs Operating Under the Agricultural Fair Act, 8 Ill. Adm. Code, Part 260

1) Rulemaking:

A) Description: As a result of the General Assembly passing Senate Bill 1281 in December 2000, county fair rules need to be revised.

B) Statutory Authority: Agricultural Fair Act [30 ILCS 120]

C) Scheduled meeting/hearing date: Written comments may be submitted during the 45-day public comment period following publication of proposed rulemaking in the *Illinois Register*.

D) Date Agency anticipates First Notice: June 2001

E) Effect on small businesses, small municipalities or not for profit corporations: No impacts anticipated.

F) Agency contact person for information:



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James J. Reynolds  
Illinois Department of Agriculture  
State Fairgrounds  
Springfield, IL 62794-9281  
217/782-4231  
FAX: 217/524-6194

G) Related rulemakings and other pertinent information: None

w) Part(s) (Heading and Code Citation): Illinois Fertilizer Law, 8 Ill. Adm. Code 215

1) Rulemaking:

A) Description: The rule changes would adopt many of the national standards for the safe handling of anhydrous ammonia. It would allow the Department to utilize new technology and equipment developed since the last rulemaking.

B) Statutory Authority: The Fertilizer Law <9505 ILCS 80>

C) Scheduled meeting/hearing date: Written comments may be submitted during the 45-day public comment period following publication of proposed rulemaking in the *Illinois Register*.

D) Date Agency anticipates First Notice: April 2001

E) Effect on small businesses, small municipalities or not for profit corporations: No adverse impacts are anticipated

F) Agency contact person for information:

Mark Ringler  
Illinois Department of Agriculture  
P. O. Box 19281  
Springfield, IL 62794  
217/785-1082  
FAX: 217/524-7801

G) Related rulemakings and other pertinent information: None

x) Part(s) (Heading and Code Citation): Illinois Seed Law, 8 Ill. Adm. Code 230

1) Rulemaking:

A) Description: The rule changes will allow the Department to offer different tests that are currently available for seed products and allow the establishment of fees for these tests (i.e. T2, seed county, etc.). These rules allow for the Department to update its services offered to those groups or individuals wishing to utilize them.

B) Statutory Authority: The Illinois Seed Law [505 ILCS 110]

C) Scheduled meeting/hearing date: Written comments may be submitted during the 45-day public comment period following publication of proposed rulemaking in the *Illinois Register*.

D) Date Agency anticipates First Notice: April 2001

E) Effect on small businesses, small municipalities or not for profit corporations: No adverse impact is expected

F) Agency contact person for information:

Mark Ringler  
Illinois Department of Agriculture  
P. O. Box 19281  
Springfield, IL 62794-9281  
217/785-1082  
FAX: 217/524-7801

G) Related rulemakings and other pertinent information: None

y) Part(s) (Heading and Code Citation): The Grain Code, 8 Ill. Adm. Code 281

1) Rulemaking:

A) Description: The Department intends to propose rules for the Grain Code as a result of the amendments enacted in SB1070. SB1070 changed the method by which a person registers for the authority to print price later contracts and warehouse receipts.

B) Statutory Authority: 240 ILCS 40/1-1

C) Scheduled meeting/hearing date: Written comments may be submitted during the 45-day public comment period following publication of proposed rulemaking in the *Illinois Register*.

D) Date Agency anticipates First Notice: April 2001

E) Effect on small businesses, small municipalities or not for profit

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corporations: No effect anticipatedF) Agency contact person for information:

Bob Leach  
 Illinois Department of Agriculture  
 P. O. Box 19281  
 Springfield, IL 62794-9281  
 217/785-8306  
 FAX: 217/524-7801

G) Related rulemakings and other pertinent information: None

- z) Part(s) (Heading and Code Citation): Illinois State Fair, and DuQuoin State Fair, Non-Fair Space Rental and the General Operation of the State Fairgrounds, 8 Ill. Adm. Code 270

1) Rulemaking:

- A) Description: Amendments to "Non-Fair Space Rental, Payment Process, Camping, Facility Availability, Insurance, Concessions, Gambling, Raffles, Prizes, Beverages, Rate Schedules, Contract and General Stabling Rules will be amended to facilitate additional rentals to maximize income throughout the non-fair season. In addition, the amendments will bring the rules in line with new procedures on the Illinois State Fairgrounds.

- B) Statutory Authority: State Fair Act [20 ILCS 210]

- C) Scheduled meeting/hearing date: Written comments may be submitted during the 45-day public comment period following publication of proposed rulemaking in the Illinois Register.

- D) Date Agency anticipates First Notice: April 2001

- E) Effect on small businesses, small municipalities or not for profit corporations: This rulemaking will affect those wishing to rent space/buildings on the fairgrounds.

F) Agency contact person for information:

Jeff Dillman, Non-Fair Events Manager  
 Illinois Department of Agriculture  
 P. O. Box 19281  
 Springfield, IL 62794-9281  
 217/782-1698  
 FAX: 217/557-5729

## DEPARTMENT OF AGRICULTURE

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G) Related rulemakings and other pertinent information: None

- aa) Part(s) (Heading and Code Citation): Illinois Value-Added Agriculture Enhancement Program, 8 Ill. Adm. Code 10

1) Rulemaking:

- A) Description: Rules will be adopted to implement a grant program for value-added agricultural products.

- B) Statutory Authority: Civil Administrative Code of Illinois [20 ILCS 205/40.43(e)]

- C) Scheduled meeting/hearing date: No hearings have been set to date. However, hearings will be held during the 45-day first-notice period. Written comments may also be submitted during the 45-day public comment period following publication of proposed rulemaking in the Illinois Register.

- D) Date Agency anticipates First Notice: April 2001

- E) Effect on small businesses, small municipalities or not for profit corporations: Small agribusiness should benefit from the grant program for value-added agricultural products.

- F) Agency contact person for information:

Cynthia Ervin  
 Illinois Department of Agriculture  
 P. O. Box 19281  
 Springfield, IL 62794-9281  
 217/785-4507  
 217/785-4505 (fax)

- G) Related rulemakings and other pertinent information: None

## OFFICE OF THE AUDITOR GENERAL

## JANUARY 2001 REGULATORY AGENDA

- a) Part(s) (Heading and Code Citation): Public Information, Rulemaking, Organization and Personnel (2 Ill. Adm. Code 600)

1) Rulemaking:

A) Description: The rulemaking agenda is for the purpose of updating and revising various personnel rules, which were promulgated in 1994.

B) Statutory Authority: Implementing and authorized by sections 2-10 and 2-12(a) of the Illinois State Auditing Act [30 ILCS 5/2-10 and 2-12(a)]

C) Scheduled meeting/hearing dates: Not yet determined

D) Date agency anticipates First Notice: February 12, 2001

E) Affect on small businesses, small municipalities or not for profit corporations: None

F) Agency contact person for information:

Aric Simons  
Legal Counsel  
Office of the Auditor General  
160 North LaSalle Suite S-900  
Chicago, IL 60601  
(312) 814-4015  
(217) 524-4646 (TDD)

G) Related rulemakings and other pertinent information: None

## ILLINOIS COMMERCE COMMISSION

## JANUARY 2001 REGULATORY AGENDA

- a) Part(s) (Heading and Code Citation): Standard Filing Requirements for Electric, Gas, Water and Sewer Utilities and Telecommunications Carriers in Filing for an Increase in Rates, 83 Ill. Adm. Code 285

1) Rulemaking:

A) Description: This rulemaking proceeding is examining the required data that must be filed with the Commission when any of the subject entities files a general rate increase. This material is reviewed by Commission staff in preparation of the rate case.

B) Statutory Authority: Implementing Section 9-201 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/9-201 and 10-101]

C) Scheduled meeting/hearing date: Persons interested in participating in the proceeding should file a petition to intervene in Docket 93-0351.

D) Date agency anticipates First Notice: Undetermined

E) Affect on small businesses, small municipalities or not for profit corporations: This rulemaking will affect any subject utilities or local exchange carriers that are also small businesses.

F) Agency contact person for information:

Donna M. Caton  
Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62706  
217-782-7434

G) Related rulemakings and other pertinent information: None

- b) Part (Heading and Code Citation): Standard of Conduct and Functional Separation 83 Ill. Adm. Code 452

1) Rulemaking:

A) Description: Section 16-119A(a) of the Public Utilities Act requires the Commission to open a rulemaking to implement competition-fostering aspects of the amendments to the Public Utilities Act in P.A. 90-561. The rules will establish standards of conduct for public utilities in the generation and distribution aspects of the industry. Section 16-119A(b) of the Public

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Utilities Act gives the Commission the authority to investigate the need for, and adopt rules requiring, functional separation between the generation services and the delivery services of those electric utilities whose principal service area is in Illinois as necessary to meet the objective of creating efficient competition between suppliers of generating services and sellers of such services at retail and wholesale. The subject matter of this subsection is intertwined with the subject matter of subsection (a).

B) Statutory Authority: Implementing and authorized by Section 16-119A of the Public Utilities Act [220 ILCS 5/16-119A]

C) Scheduled meeting/hearing date: Persons interested in participating in the proceeding should file a petition to intervene in dockets 98-0147 and 98-0148, consolidated.

D) Date agency anticipates First Notice: Undetermined

E) Affect on small businesses, small municipalities or not for profit corporations: This rulemaking will affect any subject utilities or alternative retail electric suppliers that are also small businesses.

F) Agency contact person for information:

Donna M. Caton  
Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62706  
217-782-7434

G) Related rulemakings and other pertinent information: None

c) Part (Heading and Code Citation): Standards of Service for Local Exchange Telecommunications Carriers, 83 Ill. Adm. Code 730

1) Rulemaking:

A) Description: The Commission has received a Telecommunications Division Staff Report ("Staff Report") dated August 31, 2000. In it, the Commission's Telecommunications Staff expresses the belief that Part 730 should be reviewed to ascertain that the standards for local exchange telecommunications service are clear as well as consistently applied and reported by all local exchange carriers. Staff also believes that Part 730 does not have sufficient penalty

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mechanisms associated with it to modify a local exchange carrier's performance. In Staff's view, the standards of Part 730 must be evaluated to determine if the levels of service currently required of local exchange carriers are appropriate, or if more stringent measures should be adopted. Staff recommends that the Commission conduct a review of Part 730 to ensure that the standards provide customers of local exchange carriers with meaningful reassurances of an appropriate level of service quality.

B) Statutory Authority: Implementing Section 8-301 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/8-301 and 10-101]

C) Scheduled meeting/hearing date: Persons interested in participating in the proceeding should file a petition to intervene in docket 00-0596.

D) Date agency anticipates First Notice: Undetermined

E) Affect on small businesses, small municipalities or not for profit corporations: This rulemaking will affect any subject local exchange carriers that are also small businesses.

F) Agency contact person for information:

Donna M. Caton  
Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62706  
217-782-7434

G) Related rulemakings and other pertinent information: None

## ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

## JANUARY 2001 REGULATORY AGENDA

- a) Part(s) (Heading and Code Citation): Protection of Human Subjects in Research Conducted by the Authority, 20 Ill. Adm. Code 1580

1) Rulemaking:

A) Description: The Authority plans to propose rulemaking necessary for the administration of an institutional review board to ensure the protection of human subjects in research conducted by the Authority.

B) Statutory Authority: 20 ILCS 3930/7

C) Scheduled meeting/hearing dates: No meetings or hearings have been scheduled.

D) Date agency anticipates First Notice: The Authority anticipates that it will submit a notice of proposed rulemaking during the next 6 months of this year.

E) Affect on small businesses, small municipalities or not for profit corporations: The rulemaking may affect small businesses, small municipalities or not for profit corporations if they conduct or are involved in Authority-sponsored research projects.

F) Agency contact person for information:

Kristi J. Kangas  
120 S. Riverside Plaza, Suite 1016  
Chicago, IL 60606  
312-793-8550

G) Related rulemakings and other pertinent information: None

## STATE BOARD OF EDUCATION

## JANUARY 2001 REGULATORY AGENDA

- a) Part (Heading and Code Citation): Certification; 23 Ill. Adm. Code 25

1) Rulemaking:

A) Description: Amendments will be needed to implement the transition to a new certification structure for special education. A new credential will be phased in, and ending dates need to be established for the effectiveness of some existing provisions.

B) Statutory Authority: 105 ILCS 5/Art. 21 and 2-3.6

C) Scheduled meeting/hearing date: To be announced

D) Date agency anticipates First Notice: April 27, 2001

E) Effect on small businesses, small municipalities, or not-for-profit corporations: None.

F) Agency contact person for information:

Sally Vogl  
Rules Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777  
(217) 782-3950

G) Related rulemakings and other pertinent information: Corresponding amendments will be needed in the rules for special education (23 Ill. Adm. Code 226); see below.

- b) Part (Heading and Code Citation): Calculation of Excess Cost Under Section 18-3 of the School Code; 23 Ill. Adm. Code 140

1) Rulemaking:

A) Description: Appropriate references will be inserted to acknowledge the requirement for timely filing of claims established by P.A. 91-764.

B) Statutory Authority: 105 ILCS 5/18-3

C) Scheduled meeting/hearing date: To be announced

D) Date agency anticipates First Notice: June 8, 2001

E) Effect on small businesses, small municipalities, or



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not-for-profit corporations: None

F) Agency contact person for information:

Sally Vogl  
Rules Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777  
(217) 782-3950

G) Related rulemakings and other pertinent information: None

c) Part (Heading and Code Citation): Disadvantaged Students Funds Plans - Districts Between 1,000 and 50,000 ADA; 23 Ill. Adm. Code 201

1) Rulemaking:

A) Description: Part 201 will be updated to reflect the provisions of Section 18-8.05 of the School Code.

B) Statutory Authority: 105 ILCS 5/18-8.05(H)

C) Scheduled meeting/hearing date: To be announced

D) Date agency anticipates First Notice: July 6, 2001

E) Effect on small businesses, small municipalities, or not-for-profit corporations: None

F) Agency contact person for information:

Sally Vogl  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777  
(217) 782-3950

G) Related rulemakings and other pertinent information: This rulemaking will be a companion to similar technical revisions needed in Part 202 (Disadvantaged Students Funds Plans - Districts Over 50,000 ADA), which were noted in the July 2000 regulatory agenda.

d) Part (Heading and Code Citation): Special Education; 23 Ill. Adm. Code

## STATE BOARD OF EDUCATION

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1) Rulemaking:

A) Description: Revisions will be made in the requirements related to special education personnel to conform to the new structure of credentials that will be described in the rules for Certification (23 Ill. Adm. Code 25) as noted above.

B) Statutory Authority: 105 ILCS 5/Art. 14 and 2-3.6

C) Scheduled meeting/hearing date: To be announced

D) Date agency anticipates First Notice: April 27, 2001

E) Effect on small businesses, small municipalities, or not-for-profit corporations: None

F) Agency contact person for information:

Sally Vogl  
Rules Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777  
(217) 782-3950

G) Related rulemakings and other pertinent information: None

e) Part (Heading and Code Citation): Student Records; 23 Ill. Adm. Code 375

1) Rulemaking:

A) Description: Part 375 will be amended to reflect the provisions of P.A. 91-365 regarding placement of students into alternative programs.

B) Statutory Authority: 105 ILCS 10 and 105 ILCS 5/2-3.13a

C) Scheduled meeting/hearing date: To be announced

D) Date agency anticipates First Notice: April 6, 2001

E) Effect on small businesses, small municipalities, or not-for-profit corporations: None

F) Agency contact person for information:

## STATE BOARD OF EDUCATION

JANUARY 2001 REGULATORY AGENDA

Sally Vogl

Rules Coordinator  
 Illinois State Board of Education  
 100 North First Street  
 Springfield, Illinois 62777  
 (217) 782-3950

G) Related rulemakings and other pertinent information: None

f) Part (Heading and Code Citation): School Technology Program; 23 Ill. Adm. Code 575

1) Rulemaking:

A) Description: Technical changes will be made in Part 575 to improve the operation of the program, based on the first several years' experience with this new initiative.

B) Statutory Authority: 105 ILCS 5/2-3.117a

C) Scheduled meeting/hearing date: To be announced

D) Date agency anticipates First Notice: March 30, 2001

E) Effect on small businesses, small municipalities, or not-for-profit corporations: None

F) Agency contact person for information:

Sally Vogl  
 Rules Coordinator  
 Illinois State Board of Education  
 100 North First Street  
 Springfield, Illinois 62777  
 (217) 782-3950

G) Related rulemakings and other pertinent information: None

## ENVIRONMENTAL PROTECTION AGENCY

JANUARY 2001 REGULATORY AGENDA

a) Part(s) (Heading and Code Citation): Measurement Procedures For The Enforcement Of 35 Ill. Adm. Code 900 and 901 (35 Ill. Adm. Code 951); Measurement Procedures for the Enforcement of 35 Ill. Adm. Code 902 (35 Ill. Adm. Code 952)

1) Rulemaking: Proposed Repealer

A) Description: Part 951 contains regulations establishing personnel qualifications, instrumentation and measurement techniques for conducting sound pressure level measurements. The Agency adopted these regulations pursuant to 35 Ill. Adm. Code 900.103, which allows the Agency to adopt procedures setting forth criteria for the measurement of sound. The procedures set forth in Part 951, however, are based upon standards that are now obsolete. As a result, Part 951 is no longer used. Furthermore, the Board held in R83-7, In re General Motors Corp. Proposed Amendments to 35 Ill. Adm. Code 900.103 and 901.104, Adopted Rule and Final Order (Jan. 22, 1987), that Part 951 deviated from the standards established by the American National Standards Institute ("ANSI") sufficiently to violate the Board's intent that sound measurements used to assess compliance with its noise regulations be in substantial conformance with such standards.

Part 952 contains procedures for the inspection, surveillance and measurement of motor vehicles and motor vehicle equipment to determine whether they conform to the noise standards specified in 35 Ill. Adm. Code 902. These regulations were adopted by the Agency to carry out 35 Ill. Adm. Code 900.103. The procedures set forth in Part 952, however, are based upon standards that are now obsolete. As a result, Part 952 is no longer used.

B) Statutory authority: Sections 25 and 27 of the Environmental Protection Act (415 ILCS 5/25 and 27) and 35 Ill. Adm. Code 900.103.

C) Scheduled meeting/hearing dates: The Agency has not yet scheduled meeting or hearing dates on this proposal.

D) Date Agency anticipates First Notice, if known: Winter or Spring of 2001

E) Effect on small businesses, small municipalities or not-for-profit corporations: The Parts proposed for repeal is obsolete. Therefore, small businesses, small municipalities and not-for-profit corporations will not be affected by the proposal.

F) Agency contact person for information:

## ENVIRONMENTAL PROTECTION AGENCY

## JANUARY 2001 REGULATORY AGENDA

Kyle Rominger  
1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
217-782-5544

- G) Related rulemakings and other pertinent information: The Agency plans to propose amendments to the Illinois Pollution Control Board to update the ANSI standards referenced in 35 Ill. Adm. Code Part 900 and to correct an inconsistent method of measurement required by 35 Ill. Adm. Code 901.104.

- b) Part(s) (Heading and Code Citation): Licensing of Industrial Hygienists (35 Ill. Adm. Code 184)

1) Rulemaking: Proposed Amendment

- A) Description: 35 Ill. Adm. Code 184 contains regulations governing the procedures to be used by the Illinois Environmental Protection Agency in administering a system for the licensing and sanctioning of industrial hygienists. The Agency plans to propose an increase in the license renewal fee for an unexpired license from \$50.00 to \$100.00 to allow the licensing program to remain self-supporting.

- B) Statutory authority: Implementing and authorized by the Industrial Hygiene Licensing Act, 225 ILCS 52/1 et. seq

- C) Scheduled meeting/hearing dates: The Agency has not yet scheduled meeting or hearing dates on this proposal.

- D) Date Agency anticipates First Notice, if known: Winter or Spring of 2001

- E) Effect on small businesses, small municipalities or not-for-profit corporations: The proposed amendment is not expected to affect small business. The licensing of Industrial Hygienists is voluntary and unlicensed industrial hygienists are not precluded from practicing in Illinois. Furthermore, small municipalities and not-for-profit corporations are not expected to be affected because only natural persons may obtain licenses.

F) Agency contact person for information:

Kyle Rominger  
1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276

## ENVIRONMENTAL PROTECTION AGENCY

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217-782-5544

- G) Related rulemakings and other pertinent information: None presently known

- c) Part(s) (Heading and Code Citation): Operation of the Hazardous Waste Fee System (35 Ill. Adm. Code 855)

1) Rulemaking:

- A) Description: Amendments to this Part became necessary as a result of amendments to 35 Ill. Adm. Code 809. The amendments are not substantive in nature. They are merely to correct inconsistencies in cross-references that were created by amendments to part 809.

- B) Statutory authority: Sections 22.2(c) of the Environmental Protection Act [415 ILCS 5/22.2(c)]

- C) Scheduled meeting/hearing dates: None at this time

- D) Date Agency anticipates First Notice, if known: First notice is anticipated sometime in May or June 2001.

- E) Effect on small businesses, small municipalities or not-for-profit corporations: The Illinois Environmental Protection Agency does not anticipate that small business, not-for-profit corporations, or small municipalities will be affected by this rule.

- F) Agency contact person for information:

Kimberly A. Geving  
1021 North Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
217-782-5544

- G) Related rulemakings and other pertinent information: None

- d) Part(s) (Heading and Code Citation): Procurement (44 Ill. Adm. 550)

1) Rulemaking:

- A) Description: The Illinois Environmental Protection Agency ("IEPA") is preparing a rulemaking to implement the requirements of the Architectural, Engineering and Land Surveying Qualifications Based Selection Act, 30 ILCS 535/1, et seq ("QBSA"). The IEPA will

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propose a repealer for the rules at Part 550 of Title 44, which were promulgated under the Illinois Purchasing Act (now repealed) and are outdated. The IEPA will also simultaneously propose new rules for Part 550, which will implement the QBSA. Those rules will outline IEPA procedures for procuring services under the QBSA.

B) Statutory authority: Implementing and authorized by Section 4 of the Illinois Environmental Protection Act (415 ILCS 5/4) and implementing Sections 20 through 55 of the QBSA.

C) Scheduled meeting/hearing dates: The IEPA has not yet scheduled meetings or hearings on this proposal.

D) Date Agency anticipates First Notice, if known: March 1, 2001

E) Effect on small businesses, small municipalities or not-for-profit corporations: Small businesses that wish to perform services for the IEPA covered by the QBSA will be affected by these rules.

F) Agency contact person for information:

Christopher P. Perzan  
1021 North Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
217-782-5544

G) Related rulemakings and other pertinent information: None

e) Part(s) (Heading and Code Citation): Illinois Environmental Protection Agency (Illinois EPA) rules on Accreditation and Operation of Environmental Laboratories (35 Ill. Adm. Code 186)

1) Rulemaking:

A) Description: The Illinois Environmental Protection Agency (IEPA) is preparing a rulemaking proposal to amend 35 Ill. Adm. Code 186 to respond to a recent audit of the Illinois EPA/Division of Laboratories (DOL) Environmental Laboratory Accreditation Program (IL ELAP) by the United States Environmental Protection Agency's National Environmental Laboratory Accreditation Program (NELAP), and to recent changes to the National Environmental Laboratory Accreditation (NELAC) standards. The proposed amendments to the IEPA's rules in Part 186 are required for the IL ELAP to become a NELAP-approved program.

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B) Statutory Authority: Implementing and authorized by Sections 4(o) and 4(p) of the Illinois Environmental Protection Act [415 ILCS 5/4(o)] and 5/4(p)]

C) Scheduled meeting/hearing dates: The IEPA met with the Ad-hoc Environmental Laboratory Advisory Committee in July 1999.

D) Date agency anticipates First Notice: February 1, 2001

E) Affect on small businesses, small municipalities or not for profit corporations: This rulemaking will allow commercial laboratories in Illinois to compete with commercial laboratories in other NELAP approved states. In absence of this rulemaking, the IL ELAP would not be approved for NELAP, putting Illinois' commercial laboratories at a competitive disadvantage with commercial laboratories in other NELAP approved states.

F) Agency contact person for information:

Ron Turpin, Manager  
Laboratory Accreditation Section  
Division of Laboratories  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62794-9276  
(217) 785-7475

G) Related Rulemaking and other pertinent information: None

f) Parts (Headings and Code Citations): Technical Policy Statements (35 Ill. Adm. Code 651 through 654)

1) Rulemaking:

A) Description: The amendments to these Illinois EPA rules will update definitions and explanations of administrative procedures and provide current information to owners, operators and official custodians of public water supplies. More recent design and operational criteria will be incorporated to provide information necessary for the design, operation, and maintenance of public water supplies and to facilitate the permitting process.

The amendments to these Illinois EPA rules will also incorporate technical, financial, and managerial requirements for new public water supplies (PWS). The proposed amendments are required by the 1996 amendments to the federal Safe Drinking Water Act (SDWA). On May 22, 1998, the Illinois General Assembly passed SB 545 which,

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inter alia, amends Sections 15 and 18 of the Environmental Protection Act (Act) [415 ILCS 5/15 and 5/18] to require that new PWS have the technical, financial, and managerial capacity to meet federal and State Drinking water regulations. The Governor signed this bill into law on August 14, 1998.

B) Statutory Authority: Implementing and authorized by Sections 14 through 19 of the Illinois Environmental Protection Act [415 ILCS 5/14 through 5/19]

C) Scheduled meeting/hearing dates: The Illinois EPA has not yet scheduled meetings or hearings on this proposal.

D) Date Agency Anticipates First Notice: June 1, 2000

E) Affect on small business, small municipalities or not-for-profit corporations: These amendments will generally benefit small businesses, small municipalities and not for profit entities by clarifying the requirements for operations and permits. There may be some additional reporting requirements.

These amendments may also affect new small businesses, new small municipalities, and new not-for-profit corporations in Illinois to the extent the affected entities own or operate a "public water supply", as defined by Section 3.28 of the Act, i.e., it has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year, or it is assisting a public water supply to demonstrate compliance.

F) Agency contact person for information:

Lou Allyn Byus  
Field Operations Section  
Division of Public Water Supplies  
Bureau of Water  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62794-9276  
217-782-8653

G) Other pertinent information concerning these amendments: None

g) Part (Heading and Code Citation): Part Number Is Not Yet Reserved

1) Rulemaking: No docket presently reserved

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A) Description: The Illinois Environmental Protection Agency (IEPA) is currently preparing a rulemaking proposal for filing before the Board relating to methodology to develop Clean Water Act Section 303(d) list. This rule would establish the criteria that the IEPA would use to develop the list of the impaired waterbodies.

B) Statutory Authority: Implementing and authorized by Sections 4, 11 and 39(b) of the Environmental Protection Act [415 ILCS 5/4, 11 and 139(b)]

C) Schedule meeting/hearing date: The IEPA presently anticipates that it will file a rulemaking proposal in July 2001. No meetings or hearing are scheduled at this time. Once the proposal is filed, the Board will conduct public hearings in accordance with the requirements established by Section 27 and 28 of the Environmental Protection Act. [415 ILCS 5/27 and 28].

D) Date agency anticipates First Notice: An IEPA submittal of the proposal to the Board would commence this proceeding, and the IEPA expects to file a proposal in July 2001 with the Board. After the filing of a proposal by the IEPA, the Board will cause a Notice of Proposed Amendments to appear in the *Illinois Register*.

E) Effect on Small Businesses, small municipalities or not for profit corporations: This rule may affect any small business, small municipality, or not-for profit corporation that discharges wastewater into the waters of this State.

F) Agency contact person for information: Address written comments concerning the substance of the rulemaking as follows:

Bruce Yurdin  
Watershed Management  
Bureau of Water  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield IL 62794-9276  
217/782-0610

G) Related Rulemaking and other pertinent information: None

h) Part(s)(Heading and Code Citation): Procedures for Issuing Loans from the water Pollution Control Revolving Loan Fund (35 Ill. Adm. Code 365)

1) Rulemaking:



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A) Description: This rulemaking amends the Agency's present Water Pollution Control loan rules to update and make them consistent with current Federal guidance and the Agency's rules for the Public Water Supply Loan Program, 35 Ill. Adm. Code 663.

B) Statutory Authority: The amended rules implement Title IV-A Water Pollution Control of the Illinois Environmental Protection Act (415 ILCS 5/19.1 through 19.8)

C) Schedule meeting/hearing date: The Agency has not yet scheduled a hearing or meeting on these proposed rules.

D) Date agency anticipates First Notice: July 30, 2001

E) Affect on small businesses, small municipalities or not for profit corporations: These rules apply only to public entities, such as municipalities, sanitary districts, etc. The amendments will simplify the procedures for obtaining loans from the wastewater treatment loan program.

F) Agency contact person for information:

Ron Drainer  
Infrastructure Financial Assistant Section  
Bureau of Water  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield IL 62794-9276  
(217) 782-2027

G) Related rulemaking and other pertinent information: None

i) Part(s) (Heading and Code Citation): Design Criteria for Sludge Application on Land, (35 Ill. Adm. Code 391)

1) Rulemaking:

A) Description: This rulemaking amends the Illinois procedures for sludge application on land to make them consistent with Federal requirements.

B) Statutory Authority: 415 ILCS 5/11(b), 39(b)

C) Scheduled meeting/hearing date: No hearings have been scheduled

D) Date agency anticipates First Notice: September 1, 2001

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E) Affect on small businesses, small municipalities or not for profit corporations: These amendments impose new requirements for any small business, small municipality or not for profit corporation that generates, uses or distributes sludge for application on land.

F) Agency contact person for information:

Alan Keller, P.E.  
Bureau of Water  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P. O. Box 19276  
Springfield IL 62794-9276  
(217) 782-0610

G) Related rulemaking and other pertinent information: The Agency is preparing a rulemaking proposal for filing with the Illinois Pollution Control Board, Standards for Sludge Management, 35 Ill. Adm. Code 313, that sets substantive requirements for land application of sludge, including limitations on pollutant concentrations.

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a) Part(s) (Heading and Code Citation): Commercial Fishing in Lake Michigan - 17 Ill. Adm. Code 850

1) Rulemaking:

A) Description: This Part contains regulations for commercial fisherman licensed to fish in Lake Michigan.

B) Statutory Authority: Implementing and authorized by Sections 1-10, 1-80, 1-120, 1-125, 1-135, 1-150, 20-35, 20-45, 20-105 and 25-5 of the Fish and Aquatic Life Code [515 ILCS 5/1-10, 1-80, 1-120, 1-125, 1-135, 1-150, 20-35, 20-45, 20-105 and 25-5].

C) Scheduled meeting/hearing dates: None

D) Date agency anticipates First Notice: January 2001

E) Affect on small businesses, small municipalities or not for profit corporations: Part contains license eligibility requirements and reporting procedures for licensed Lake Michigan Commercial Fishermen.

F) Agency contact person for information:

Jack Price  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

G) Related rulemakings and other pertinent information: None

b) Part(s) (Heading and Code Citation): Aquaculture, Transportation, Stocking, Importation and/or Possession of Aquatic Life - 17 Ill. Adm. Code 870

1) Rulemaking:

A) Description: This Part contains procedures for Aquaculture, transportation, stocking, importation and/or possession of aquatic life in the State of Illinois.

B) Statutory Authority: Implementing and authorized by Sections 1-20, 1-105, 1-125, 1-135, 1-140 and 1-145 of the Fish and Aquatic Life Code [515 ILCS 5/1-20, 1-105, 1-125, 1-135, 1-140 and 1-145].

C) Scheduled meeting/hearing dates: None

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D) Date agency anticipates First Notice: January 2001

E) Affect on small businesses, small municipalities or not for profit corporations: None

F) Agency contact person for information:

Jack Price  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

G) Related rulemakings and other pertinent information: None

c) Part(s) (Heading and Code Citation): Fish Removal with Chemicals - 17 Ill. Adm. Code 890

1) Rulemaking:

A) Description: Persons wishing to eliminate undesirable fish from water areas under their control, utilizing a fish toxicant, are required to first obtain a permit "to Remove Undesirable Fish" from the Illinois Department of Natural Resources. This Part contains permit requirements.

B) Statutory Authority: Implementing and authorized by Sections 1-135, 1-150 and 5-5 of the Fish and Aquatic Life Code [515 ILCS 5/1-135, 1-150 and 5-5].

C) Scheduled meeting/hearing dates: None

D) Date agency anticipates First Notice: January 2001

E) Affect on small businesses, small municipalities or not for profit corporations: None

F) Agency contact person for information:

Jack Price  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

G) Related rulemakings and other pertinent information: None

d) Part(s) (Heading and Code Citation): Conservation Reserve Enhancement

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Program (CREP) - 17 Ill. Adm. Code 1515

1) Rulemaking:

A) Description: The purpose of this program is to provide long term environmental benefits by allowing 232,000 acres of certain environmentally sensitive lands in the Illinois River Watershed to be restored, enhanced or protected over a period of time from 15 years to perpetuity. The Conservation Reserve Enhancement Program (CREP) will be driven by locally led conservation efforts which show landowner support. This program will be the vehicle for a partnership between landowners, governmental entities, and non-governmental organizations in addressing watershed quality problems.

B) Statutory Authority: Implementing and authorized by the Intergovernmental Cooperation Act [5 ILCS 220], the Soil and Water Conservation Districts Act [70 ILCS 405], the Fish and Aquatic Life Code [515 ILCS 5], the Wildlife Code [520 ILCS 5], the Real Property Conservation Rights Act [765 ILCS 120], and the Civil Administrative Code of Illinois (Part 13.5) [20 ILCS 805].

C) Scheduled meeting/hearing dates: None

D) Date agency anticipates First Notice: March 2001

E) Affect on small businesses, small municipalities or not for profit corporations: None

F) Agency contact person for information:

Cindy Bushur-Hallam  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

G) Related rulemakings and other pertinent information: None

e) Part(s) (Heading and Code Citation): Land and Water Conservation Fund Grant Program; 17 Ill. Adm. Code 3030

1) Rulemaking:

A) Description: Any unit of local government which is empowered to acquire and develop lands for park and recreational purposes, such as cities, villages, park districts, conservation districts, forest preserve districts may apply for this grant.

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B) Statutory Authority: Implementing and authorized by Sections 1 through 5 of "An Act relating to the planning, acquisition and development of outdoor recreation resources and facilities, and authorizing the participation by the State of Illinois, its political subdivisions and qualified participants in programs of Federal assistance relating thereto", (Ill. Rev. Stat. 1989, ch. 105, pars. 531-535) and implementing Title VI of the Federal Civil Rights Act of 1964 (43 CFR 17, 1983).

C) Scheduled meeting/hearing dates: None

D) Date agency anticipates First Notice: March 2001

E) Affect on small businesses, small municipalities or not for profit corporations: Entities must submit a project grant application, meet established criteria, and comply with program requirements.

F) Agency contact person for information:

Jack Price  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

G) Related rulemakings and other pertinent information: None

f) Part(s) (Heading and Code Citation): Public Use of State Park and Other Properties of the Department of Natural Resources; 17 Ill. Adm. Code 110

1) Rulemaking:

A) Description:

B) Statutory Authority: Implementing and authorized by Section 8 of the State Forest Act [525 ILCS 40/8] and by Sections 1, 2, 4 and 6 of the State Parks Act [20 ILCS 835/1, 2, 4 and 6] and by Section 5 of the State Parks Designation Act [20 ILCS 840/5] and by Sections 805-10, 805-520, 805-525, 805-330, 805-335 and 805-515 of the Civil Administrative Code of Illinois [20 ILCS 805/805-10, 805-520].

C) Scheduled meeting/hearing dates: None

D) Date agency anticipates First Notice: January 2001

E) Affect on small businesses, small municipalities or not for profit corporations: None

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F) Agency contact person for information:

Jack Price  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

G) Related rulemakings and other pertinent information: Noneg) Part(s) (Heading and Code Citation): General Definitions; 62 Ill. Adm. Code 17011) Rulemaking:

A) Description: In Section 1701.Appendix A, the definition for "Wetland" is located in the "w" section of the definitions. For the sake of clarity it should be made part of the "Land Use" definition where the rest of the land uses are located.

B) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

C) Scheduled meeting/hearing date: None

D) Date agency anticipates First Notice: June 2001

E) Affect on small businesses, small municipalities or not for profit corporations: None

F) Agency contact person for information:

Karen Jacobs  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

G) Related rulemakings and other pertinent information: Noneh) Part(s) (Heading and Code Citation): Requirements for Permits and Permit Processing; 62 Ill. Adm. Code 17731) Rulemaking:

A) Description: Section 1773.13(a)(1)(B) will be amended to have a more understandable public notice. Language will be added to require shadow areas to be clearly described in the news

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advertisement for revisions that only involve shadow area. In Section 1773.13(a)(2), the language will be amended to indicate that the applicant will provide copies of any changes to the Department and the Department will file the changes to the public office.

B) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

C) Scheduled meeting/hearing date: None

D) Date agency anticipates First Notice: June 2001

E) Affect on small businesses, small municipalities or not for profit corporations: None

F) Agency contact person for information:

Karen Jacobs  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

G) Related rulemakings and other pertinent information: None

i) Part(s) (Heading and Code Citation): General Content Requirements for Permit Applications; 62 Ill. Adm. Code 1777

1) Rulemaking:

A) Description: Section 1777.11(a)(3) will be amended to remove the reference to the Department of Mines and Minerals.

B) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

C) Scheduled meeting/hearing date: None

D) Date agency anticipates First Notice: June 2001

E) Affect on small businesses, small municipalities or not for profit corporations: None

F) Agency contact person for information:

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Karen Jacobs  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

- G) Related rulemakings and other pertinent information: None

- j) Part(s) (Heading and Code Citation): Permit Applications - Minimum Requirements For Legal, Financial, Compliance, and Related Information; 62 Ill. Adm. Code 1778

1) Rulemaking:

- A) Description: In Section 1778.15(e), the words "does not" will be added.

- B) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

- C) Scheduled meeting/hearing date: None

- D) Date agency anticipates First Notice: June 2001

- E) Affect on small businesses, small municipalities or not for profit corporations: None

- F) Agency contact person for information:

Karen Jacobs  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

- G) Related rulemakings and other pertinent information: None

- k) Part(s) (Heading and Code Citation): Bonding and Insurance Requirements For Surface Coal Mining and Reclamation Operations; 62 Ill. Adm. Code 1800

1) Rulemaking:

- A) Description: Section 1800.40 hearing procedures will be amended to be consistent with the permit application hearings.

- B) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

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- C) Scheduled meeting/hearing date: None

- D) Date agency anticipates First Notice: June 2001

- E) Affect on small businesses, small municipalities or not for profit corporations: None

- F) Agency contact person for information:

Karen Jacobs  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

- G) Related rulemakings and other pertinent information: None

- l) Part(s) (Heading and Code Citation): Permanent Program Performance Standards - Surface Mining Activities; 62 Ill. Adm. Code 1816

1) Rulemaking:

- A) Description: Section 1816.41(d) incorrectly references 1780.21(i) but should reference 1780.21(j) and 1816.116 will be amended to add a success standard for lands reclaimed to herbaceous wildlife.

- B) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

- C) Scheduled meeting/hearing date: None

- D) Date agency anticipates First Notice: June 2001

- E) Affect on small businesses, small municipalities or not for profit corporations: None

- F) Agency contact person for information:

Karen Jacobs  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

- G) Related rulemakings and other pertinent information: None

- m) Part(s) (Heading and Code Citation): Permanent Program Performance Standards - Underground Mining Operations; 62 Ill. Adm. Code



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1) Rulemaking:

- A) Description: Section 1817.116 will be amended to add a success standard for lands reclaimed to herbaceous wildlife.
- B) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].
- C) Scheduled meeting/hearing date: None
- D) Date agency anticipates First Notice: June 2001
- E) Affect on small businesses, small municipalities or not for profit corporations: None
- F) Agency contact person for information:

Karen Jacobs  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

- G) Related rulemakings and other pertinent information: None

- n) Part(s) (Heading and Code Citation): Department Inspections; 62 Ill. Adm. Code 1840

1) Rulemaking:

- A) Description:
- B) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].
- C) Scheduled meeting/hearing date: None
- D) Date agency anticipates First Notice: June 2001
- E) Affect on small businesses, small municipalities or not for profit corporations: None
- F) Agency contact person for information:

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Karen Jacobs  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

- G) Related rulemakings and other pertinent information: None

- o) Part(s) (Heading and Code Citation): The Illinois Oil and Gas Act; 62 Ill. Adm. Code 240

1) Rulemaking:

- A) Description: This Part is being amended to make necessary revisions and clarifications of the oil and gas rules to better track the provisions of the Illinois Oil and Gas Act and provide for additional environmental protection during oil and gas production activities.

- B) Statutory Authority: Implementing and authorized by the [225 ILCS]

- C) Scheduled meeting/hearing date: None

- D) Date agency anticipates First Notice: March 2001

- E) Affect on small businesses, small municipalities or not for profit corporations: None

- F) Agency contact person for information:

Peggy Witt  
524 S. Second Street  
Springfield, IL 62701  
217/782-1809

- G) Related rulemakings and other pertinent information: None

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- a) Part (Heading and Code Citation): General Provisions; 23 Ill. Adm. Code 2700

1) Rulemaking:

A) Description: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory amendments, to codify improvements due to technological advances, and to clarify issues that have arisen during the previous year. We also are continuing an initiative to increase the level of standardization in procedures, format and terminology throughout our programmatic rules, in order to make them easier for our clients to use.

B) Statutory Authority: Implementing the Higher Education Student Assistance Act [110 ILCS 947]; Title IV of the Higher Education Act of 1965, as amended (20 USCA 1070 et seq., as amended by P.L. 105-244); and authorized by Section 20(f) of the Higher Education Student Assistance Act [110 ILCS 947/20(f)].

C) Scheduled meeting/hearing dates: At this time, ISAC has not scheduled a hearing or a meeting specifically to solicit comments on this anticipated rulemaking. Nonetheless, members of the public may submit views or comments in writing to the individual identified in item F, below.

D) Date agency anticipates First Notice: January 2001

E) Affect on small business, municipalities or not for profit corporations: None

F) Agency Contact Person for Information:

Mr. Thomas A. Breyer  
Deputy Program Officer  
Illinois Student Assistance Commission  
1755 Lake Cook Road  
Deerfield, Illinois 60015-5209  
847-948-8500

G) Related rulemakings and other pertinent information: None

- b) Part (Heading and Code Citation): Federal Family Education Loan Program (FFELP); 23 Ill. Adm. Code 2720

1) Rulemaking:

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A) Description: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory amendments, to codify improvements due to technological advances, and to clarify issues that have arisen during the previous year. We also are continuing an initiative to increase the level of standardization in procedures, format and terminology throughout our programmatic rules, in order to make them easier for our clients to use.

B) Statutory Authority: Implementing Sections 80 through 175 of the Higher Education Student Assistance Act [110 ILCS 947/80 through 175]; Title IV, Part B, of the Higher Education Act of 1965, as amended (20 USCA 1071 et seq.); and authorized by Section 20(f) of the Higher Education Student Assistance Act [110 ILCS 947/20(f)].

C) Scheduled meeting/hearing dates: At this time, ISAC has not scheduled a hearing or a meeting specifically to solicit comments on this anticipated rulemaking. Nonetheless, members of the public may submit views or comments in writing to the individual identified in item F, below.

D) Date agency anticipates First Notice: January 2001

E) Affect on small business, municipalities or not for profit corporations: None

F) Agency Contact Person for Information:

Mr. Thomas A. Breyer  
Deputy Program Officer  
Illinois Student Assistance Commission  
1755 Lake Cook Road  
Deerfield, Illinois 60015-5209  
847-948-8500

G) Related rulemakings and other pertinent information: None

- c) Part (Heading and Code Citation): Alternative Loan Program; 23 Ill. Adm. Code 2721

1) Rulemaking:

A) Description: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory amendments, to codify improvements due to technological advances, and to clarify issues that have arisen during the previous year. We also are continuing an initiative to

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increase the level of standardization in procedures, format and terminology throughout our programmatic rules, in order to make them easier for our clients to use.

B) Statutory Authority: Implementing Sections 5 and 80 through 175 of the Higher Education Student Assistance Act [110 ILCS 947/5 and 80 through 175]; and authorized by Sections 20(f) and 140(a) of the Higher Education Student Assistance Act [110 ILCS 947/20(f) and 140(a)].

C) Scheduled meeting/hearing dates: At this time, ISAC has not scheduled a hearing or a meeting specifically to solicit comments on this anticipated rulemaking. Nonetheless, members of the public may submit views or comments in writing to the individual identified in item F, below.

D) Date agency anticipates First Notice: January 2001

E) Affect on small business, municipalities or not for profit corporations: None

F) Agency Contact Person for Information:

Mr. Thomas A. Breyer  
Deputy Program Officer  
Illinois Student Assistance Commission  
1755 Lake Cook Road  
Deerfield, Illinois 60015-5209  
847-948-8500

G) Related rulemakings and other pertinent information: None

d) Part (Heading and Code Citation): Illinois National Guard Grant (ING) Grant Program; 23 Ill. Adm. Code 2730

1) Rulemaking:

A) Description: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory amendments, to codify improvements due to technological advances, and to clarify issues that have arisen during the previous year. We also are continuing an initiative to increase the level of standardization in procedures, format and terminology throughout programmatic rules, in order to make them easier for our clients to use.

B) Statutory Authority: Implementing Section 45 and authorized by

## ILLINOIS STUDENT ASSISTANCE COMMISSION

## REGULATORY AGENDA JANUARY 2001

Section 20(f) of the Higher Education Student Assistance Act [110 ILCS 947/45 and 20(f)].

C) Scheduled meeting/hearing dates: At this time, ISAC has not scheduled a hearing or a meeting specifically to solicit comments on this anticipated rulemaking. Nonetheless, members of the public may submit views or comments in writing to the individual identified in item F, below.

D) Date agency anticipates First Notice: January 2001

E) Affect on small business, municipalities or not for profit corporations: None.

F) Agency Contact Person for Information:

Mr. Thomas A. Breyer  
Deputy Program Officer  
Illinois Student Assistance Commission  
1755 Lake Cook Road  
Deerfield, Illinois 60015-5209  
847-948-8500

G) Related rulemakings and other pertinent information: None

e) Part (Heading and Code Citation): Illinois Veteran Grant (IVG) Program; 23 Ill. Adm. Code 2733

1) Rulemaking:

A) Description: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory amendments, to codify improvements due to technological advances, and to clarify issues that have arisen during the previous year. We also are continuing an initiative to increase the level of standardization in procedures, format and terminology throughout our programmatic rules, in order to make them easier for our clients to use.

B) Statutory Authority: Implementing Section 40 and authorized by Section 20(f) of the Higher Education Student Assistance Act [110 ILCS 947/40 and 20(f)].

C) Scheduled meeting/hearing dates: At this time, ISAC has not scheduled a hearing or a meeting specifically to solicit comments on this anticipated rulemaking. Nonetheless, members of the public may submit views or comments in writing to the individual identified in item F, below.

## ILLINOIS STUDENT ASSISTANCE COMMISSION

## REGULATORY AGENDA JANUARY 2001

- D) Date agency anticipates First Notice: January 2001
- E) Affect on small business, municipalities or not for profit corporations: None
- F) Agency Contact Person for Information:

Mr. Thomas A. Breyer  
Deputy Program Officer  
Illinois Student Assistance Commission  
1755 Lake Cook Road  
Deerfield, Illinois 60015-5209  
847-948-8500

- G) Related rulemakings and other pertinent information: None

- F) Part (Heading and Code Citation): Monetary Award Program (MAP); 23 Ill. Adm. Code 2735

1) Rulemaking:

- A) Description: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory amendments, to codify improvements due to technological advances, and to clarify issues that have arisen during the previous year. We also are continuing an initiative to increase the level of standardization in procedures, format and terminology throughout our programmatic rules, in order to make them easier for our clients to use.

- B) Statutory Authority: Implementing Section 35 and authorized by Section 20(f) of the Higher Education Student Assistance Act [110 ILCS 947/35 and 20(f)].

- C) Scheduled meeting/hearing dates: At this time, ISAC has not scheduled a hearing or a meeting specifically to solicit comments on this anticipated rulemaking. Nonetheless, members of the public may submit views or comments in writing to the individual identified in item F, below.

- D) Date agency anticipates First Notice: January 2001

- E) Affect on small business, municipalities or not for profit corporations: None

- F) Agency Contact Person for Information:

## ILLINOIS STUDENT ASSISTANCE COMMISSION

## REGULATORY AGENDA JANUARY 2001

Mr. Thomas A. Breyer  
Deputy Program Officer  
Illinois Student Assistance Commission  
1755 Lake Cook Road  
Deerfield, Illinois 60015-5209  
847-948-8500

- G) Related rulemakings and other pertinent information: None

- g) Part (Heading and Code Citation): Illinois Incentive for Access (IIA) Program; 23 Ill. Adm. Code 2736

1) Rulemaking:

- A) Description: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory amendments, to codify improvements due to technological advances, and to clarify issues that have arisen during the previous year. We also are continuing an initiative to increase the level of standardization in procedures, format and terminology throughout our programmatic rules, in order to make them easier for our clients to use.

- B) Statutory Authority: Implementing Section 36 and authorized by Section 20(f) of the Higher Education Student Assistance Act [110 ILCS 947/36 and 20(f)].

- C) Scheduled meeting/hearing dates: At this time, ISAC has not scheduled a hearing or a meeting specifically to solicit comments on this anticipated rulemaking. Nonetheless, members of the public may submit views or comments in writing to the individual identified in item F, below.

- D) Date agency anticipates First Notice: January 2001

- E) Affect on small business, municipalities or not for profit corporations: None

- F) Agency Contact Person for Information:

Mr. Thomas A. Breyer  
Deputy Program Officer  
Illinois Student Assistance Commission  
1755 Lake Cook Road  
Deerfield, Illinois 60015-5209  
847-948-8500

## ILLINOIS STUDENT ASSISTANCE COMMISSION

## REGULATORY AGENDA JANUARY 2001

- G) Related rulemakings and other pertinent information: None

h) Part (Heading and Code Citation): Student to Student (STS) Program of Matching Grants; 23 Ill. Adm. Code 2770

1) Rulemaking:

A) Description: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory amendments, to codify improvements due to technological advances, and to clarify issues that have arisen during the previous year. We also are continuing an initiative to increase the level of standardization in procedures, format and terminology throughout our programmatic rules, in order to make them easier for our clients to use.

B) Statutory Authority: Implementing Section 65 and authorized by Section 20(f) of the Higher Education Student Assistance Act [110 ILCS 947/65 and 20(f)].

C) Scheduled meeting/hearing dates: At this time, ISAC has not scheduled a hearing or a meeting specifically to solicit comments on this anticipated rulemaking. Nonetheless, members of the public may submit views or comments in writing to the individual identified in item F, below.

D) Date agency anticipates First Notice: January 2001

E) Affect on small business, municipalities or not for profit corporations: None

F) Agency Contact Person for Information:

Mr. Thomas A. Breyer  
Deputy Program Officer  
Illinois Student Assistance Commission  
1755 Lake Cook Road  
Deerfield, Illinois 60015-5209  
847-948-8500

G) Related rulemakings and other pertinent information: None

i) Part (Heading and Code Citation): College Savings Bond Bonus Incentive Grant (BIG) Program; 23 Ill. Adm. Code 2771

1) Rulemaking:

## ILLINOIS STUDENT ASSISTANCE COMMISSION

## REGULATORY AGENDA JANUARY 2001

A) Description: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory amendments, to codify improvements due to technological advances, and to clarify issues that have arisen during the previous year. We also are continuing an initiative to increase the level of standardization in procedures, format and terminology throughout our programmatic rules, in order to make them easier for our clients to use.

B) Statutory Authority: Implementing and authorized by Section 8 of the Baccalaureate Savings Act [110 ILCS 920/8]

C) Scheduled meeting/hearing dates: At this time, ISAC has not scheduled a hearing or a meeting specifically to solicit comments on this anticipated rulemaking. Nonetheless, members of the public may submit views or comments in writing to the individual identified in item F, below.

D) Date agency anticipates First Notice: January 2001

E) Affect on small business, municipalities or not for profit corporations: None

F) Agency Contact Person for Information:

Mr. Thomas A. Breyer  
Deputy Program Officer  
Illinois Student Assistance Commission  
1755 Lake Cook Road  
Deerfield, Illinois 60015-5209  
847-948-8500

G) Related rulemakings and other pertinent information: None

j) Part (Heading and Code Citation): Illinois Prepaid Tuition Program; 23 Ill. Adm. Code 2775

1) Rulemaking:

A) Description: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory amendments, to codify improvements due to technological advances, and to clarify issues that have arisen during the previous year. We also are continuing an initiative to increase the level of standardization in procedures, format and terminology throughout our programmatic rules, in order to make them easier for our clients to use.



## ILLINOIS STUDENT ASSISTANCE COMMISSION

## REGULATORY AGENDA JANUARY 2001

- B) Statutory Authority: Implementing the Illinois Prepaid Tuition Act [110 ILCS 979] and authorized by Section 20(f) of the Higher Education Student Assistance Act [110 ILCS 947/20(f)].
- C) Scheduled meeting/hearing dates: At this time, ISAC has not scheduled a hearing or a meeting specifically to solicit comments on this anticipated rulemaking. Nonetheless, members of the public may submit views or comments in writing to the individual identified in item F, below.
- D) Date agency anticipates First Notice: January 2001
- E) Affect on small business, municipalities or not for profit corporations: None
- F) Agency Contact Person for Information:
- Mr. Thomas A. Breyer  
Deputy Program Officer  
Illinois Student Assistance Commission  
1755 Lake Cook Road  
Deerfield, Illinois 60015-5209  
847-948-8500

G) Related rulemakings and other pertinent information: None

## DEPARTMENT OF TRANSPORTATION

## JANUARY 2001 REGULATORY AGENDA

- a) Part(s) (Heading and Code Citation): Policy on Permits For Access Driveways to State Highways; 92 Ill. Adm. Code 550
- 1) Rulemaking:
- A) Description: This Part will be revised and updated to bring it into conformance with current highway design standards.
- B) Statutory Authority: Implementing and authorized by Sections 4-210, 4-211 and 4-212 of the Illinois Highway Code [605 ILCS 5/4-210, 4-211 and 4-212] and the Plat Act [765 ILCS 205]
- C) Scheduled meeting/hearing date: None scheduled
- D) Date agency anticipates First Notice: Within six months
- E) Effect on small businesses, small municipalities or not for profit corporations: Any small business desiring access to the State highway system via a driveway will be required to make application for a permit and to comply with the requirements of this Part.
- F) Agency contact person for information:
- Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel, Room 300  
2300 South Dirksen Parkway  
Springfield, IL 62764  
(217) 782-3215

G) Related rulemakings and other pertinent information: None

- b) Part(s) (Heading and Code Citation): Signing to Traffic Generators and Motorist Services; 92 Ill. Adm. Code 552

1) Rulemaking:

- A) Description: This Part will be revised in order to bring it into conformance with the Department's rules on Tourist Oriented Directional Signing (92 Ill. Adm. Code 541) and with Business Logo Signing (92 Ill. Adm. Code 542).
- B) Statutory Authority: Implementing Article III of Chapter II of the Illinois Vehicle Code [625 ILCS 5/11-301 through 11-312] and Section 4-201.12 of the Illinois Highway Code [605 ILCS 5/4-201.12] and authorized by Sections 4-101.1 and 4-201.1 of the Illinois Highway Code [605 ILCS 5/4-101.1 and 4-201.1] and Section 4.08 of the Highway Advertising Control Act [225 ILCS 440/4.08].

## DEPARTMENT OF TRANSPORTATION

## JANUARY 2001 REGULATORY AGENDA

- C) Scheduled meeting/hearing date: None scheduled
- D) Date agency anticipates First Notice: Within six months
- E) Effect on small businesses, small municipalities or not for profit corporations: All types of small businesses desiring Department-installed signing along the State highway system will be required to comply with this Part.
- F) Agency contact person for information:  
Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel, Room 300  
2300 South Dirksen Parkway  
Springfield, IL 62764  
(217) 782-3215
- G) Related rulemakings and other pertinent information: None
- c) Part(s) (Heading and Code Citation): Minimum Safety Standards for Construction of Type II School Buses; 92 Ill. Adm. Code 442
- 1) Rulemaking:
- A) Description: This Part will be amended, updated and clarified for consistency with other school bus Parts. New standards governing crossing control arms and strobe lamps will be added.
- B) Statutory Authority: [625 ILCS 5/Ch. 12, Article VIII]
- C) Scheduled meeting/hearing date: None scheduled
- D) Date agency anticipates First Notice: Within six months
- E) Effect on small businesses, small municipalities or not for profit corporations: Small businesses that own or operate school buses will be impacted by this Part.
- F) Agency contact person for information:  
Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel, Room 300  
2300 South Dirksen Parkway  
Springfield, IL 62764  
(217) 782-3215

## DEPARTMENT OF TRANSPORTATION

## JANUARY 2001 REGULATORY AGENDA

- G) Related rulemakings and other pertinent information: None
- d) Part(s) (Heading and Code Citation): Transporting Pupils Where Walking Constitutes a Serious Safety Hazard; 92 Ill. Adm. Code 556
- 1) Rulemaking:
- A) Description: The State Board of Education requested that the Department make revisions to portions of this Part.
- B) Statutory Authority: Implementing and authorized by Section 29-3 of the School Code [105 ILCS 5/29-3]
- C) Scheduled meeting/hearing date: None scheduled
- D) Date agency anticipates First Notice: Within six months
- E) Effect on small businesses, small municipalities or not for profit corporations: None
- F) Agency contact person for information:  
Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel, Room 300  
2300 South Dirksen Parkway  
Springfield, IL 62764  
(217) 782-3215
- G) Related rulemakings and other pertinent information: 92 Ill. Adm. Code 557
- e) Part(s) (Heading and Code Citation): Custodial Transportation of Pupils Where Walking Constitutes a Serious Safety Hazard; 92 Ill. Adm. Code 557
- 1) Rulemaking:
- A) Description: Portions of this Part will be revised at the request of the State Board of Education.
- B) Statutory Authority: Implementing and authorized by Section 29-5.2 of the School Code [105 ILCS 5/29-5.2]
- C) Scheduled meeting/hearing date: None scheduled
- D) Date agency anticipates First Notice: Within six months

## DEPARTMENT OF TRANSPORTATION

## JANUARY 2001 REGULATORY AGENDA

E) Effect on small businesses, small municipalities or not for profit corporations: None

F) Agency contact person for information:

Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel, Room 300  
2300 South Dirksen Parkway  
Springfield, IL 62764  
(217) 782-3215

G) Related rulemakings and other pertinent information: 92 Ill. Adm. Code 556

## SECOND NOTICES RECEIVED

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

The following second notices were received by the Joint Committee on Administrative Rules during the period of December 26, 2000 through January 2, 2001 and have been scheduled for review by the Committee at its January 9, 2001 meeting in Springfield. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start Of First Notice	JCAR Meeting
2/8/01	Department of Revenue, Retailers' Occupation Tax (86 Ill Adm Code 130)	9/29/00 24 Ill Reg 14393	1/9/01
2/8/01	Department of Revenue, Income Tax (86 Ill Adm Code 100)	11/3/00 24 Ill Reg 16218	1/9/01
2/8/01	Department of Public Health, Illinois Veterans' Homes Code (77 Ill Adm Code 340)	9/1/00 24 Ill Reg 13263	1/9/01
2/8/01	Department of Public Health, Sheltered Care Facilities Code (77 Ill Adm Code 330)	9/1/00 24 Ill Reg 13300	1/9/01
2/8/01	Department of Public Health, Long-Term Care for Under Age 22 Facilities Code (77 Ill Adm Code 390)	9/1/00 24 Ill Reg 13289	1/9/01
2/8/01	Department of Public Health, Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill Adm Code 350)	9/1/00 24 Ill Reg 13273	1/9/01
2/8/01	Department of Public Health, Long-Term Care Assistants and Aides Training Programs Code (77 Ill Adm Code 395)	9/1/00 24 Ill Reg 13284	1/9/01
2/8/01	Department of Public Health, Public Area Sanitary Practice Code (77 Ill Adm Code 895)	3/17/00 24 Ill Reg 4170	1/9/01

## SECOND NOTICES RECEIVED

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

2/11/01	Department of Public Health, Skilled Nursing and Intermediate Care Facilities Code (77 Ill Adm Code 300)	9/1/00 24 Ill Reg 13309	1/9/01
2/11/01	Department of Commerce and Community Affairs, International Tourism Program (14 Ill Adm Code 555)	2/25/00 24 Ill Reg 2882	1/9/01
2/11/01	Department of Revenue, Income Tax (86 Ill Adm Code 100)	11/13/00 24 Ill Reg 16555	1/9/01
2/11/01	Department of Revenue, Retailers' Occupation Tax (86 Ill Adm Code 130)	11/13/00 24 Ill Reg 16573	1/9/01
2/11/01	Department of Revenue, Uniform Penalty and Interest Act (86 Ill Adm Code 700)	11/13/00 24 Ill Reg 16585	1/9/01

## PROCLAMATIONS

## 2000-628

## LAKE COUNTY CRIME STOPPERS MONTH

WHEREAS, Crime Stoppers of Lake County was formed in 1983 and is a community program comprised of concerned citizens who work closely with police authorities, the news media, and the public in the fight against crime in Lake County and surrounding communities; and

WHEREAS, during the month of January, Crime Stoppers will be involved in fundraising ventures and will provide information to increase public awareness of crime prevention and community safety; and

WHEREAS, Crime Stoppers of Lake County is a non-profit organization, funded primarily by private donations of money, goods or service from the public, corporations, clubs, associations, retailers and organizations. The incredible success of Crime Stoppers is due to the continued support of all who contribute to the program. Cash rewards are paid to people who provide information leading to the arrest of felony crime offenders and to the capture of felony fugitives. Callers always remain anonymous; and

WHEREAS, Crime Stoppers of Lake County has been in existence for more than 17 years. With the cooperation of citizens and the police departments, Crime Stoppers has proven to be successful in combating crime and has more than 3,500 arrests and convictions for recovery of stolen property and illicit narcotics. It should be noted that since the program's inception in April 26, 1983, Lake County Crime Stoppers has led law enforcement officers to more than \$10 million worth of contraband and recovered stolen property throughout Lake County, Northern Illinois and Wisconsin; and

WHEREAS, Gun Stoppers is another program that has been established to remove illegal guns from public places, such as schools, school buses and playgrounds; and

WHEREAS, Lake County benefits when concerned citizens look out for each other and report crime to the appropriate authorities. It is this type of support between concerned citizens and the law enforcement agencies that improves the quality of life and safety for all communities within Lake County; THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim

January 2001 as LAKE COUNTY CRIME STOPPERS MONTH in Illinois.

Issued by the Governor December 20, 2000.

Filed by the Secretary of State December 29, 2000.

## 2000-629

## SHORE COMMUNITY SERVICES DAY

WHEREAS, SHORE Community Services is celebrating 50 years as a not-for-profit organization, founded in Evanston, Illinois in 1951; and

WHEREAS, SHORE Community Services is to be commended for 50 years of serving individuals with developmental disabilities; and

WHEREAS, SHORE Community Services continues to provide programs and services that provide growth in vocational, developmental, and daily living skills integrated into community settings for persons with developmental disabilities; and

WHEREAS, SHORE Community Services evolved from an organization consisting of a small group who organized a classroom for children with developmental

disabilities to an agency serving over 340 children and adults through Early Childhood Intervention, Adult Day Programs, Vocational, Residential and Respite Services in facilities located throughout the community; and

WHEREAS, SHORE Community Services stresses outcomes which emphasize progress so that persons served have a choice and maximum independence to the greatest extent possible;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim January 1, 2001, as SHORE COMMUNITY SERVICES DAY in Illinois.

Issued by the Governor December 20, 2000.

Filed by the Secretary of State December 29, 2000.

2000-630

**FRED J. SAPETTI DAY**

WHEREAS, Fred Sapetti has devoted 34 years of his life to serving the Department of Public Aid, beginning as a caseworker in the Christian County local office in 1967; and

WHEREAS, Fred came to the Division of Medical Programs in 1972, was promoted to Bureau Chief of Claims Processing in 1976, and began implementation of the program's first Medicaid Management Information System that same year; and

WHEREAS, Fred was promoted to the position of Deputy Administrator of the Division of Medical Programs in 1986; and

WHEREAS, Fred was instrumental in the implementation of One Cycle Long Term Care billing in 1992; electronic billing for pharmacies in 1993; Recipient Eligibility Verification in 1996; the Medicaid Fraud Prevention Executive Workgroup in 1997; and the Medical Electronic Data Interchange Project in 1999; and

WHEREAS, Fred has served under 11 Administrators and 17 Agency Directors and has served as the Acting Administrator on three occasions totaling 21 months; and

WHEREAS, Fred has provided consistent integrity and served as a role model to all staff in the Medical Division; and

WHEREAS, Fred has spent considerable time improving provider relations, maintaining industry relations, and promoting the Agency's image; and

WHEREAS, Fred has served not only State government, but also his community by presiding over the local school board for 16 years, serving as President of the school board several times; and

WHEREAS, Fred has announced his retirement effective December 31, 2000, after a long and productive career in State government; and

WHEREAS, Fred's ability to recall historical information, his recollections of great stories, his even and fair disposition, his incredible work ethic, and his general wealth of knowledge can never be replaced; and

WHEREAS, Fred will be greatly missed by all those who have had the opportunity to work with him;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim December 31, 2000, as FRED J. SAPETTI DAY in Illinois.

Issued by the Governor December 21, 2000.

Filed by the Secretary of State December 29, 2000.

2000-631

**FOREIGN LANGUAGE WEEK**

WHEREAS, the Illinois Council on the Teaching of Foreign Languages and Alpha Mu Gamma, the national foreign language honor society, work together to promote a week dedicated to the recognition of the importance of foreign language study; and

WHEREAS, the Illinois Council on the Teaching of Foreign Languages prints and distributes posters celebrating National Foreign Language Week for Illinois teachers from elementary through university levels; and

WHEREAS, foreign language skills help promote the economic development of the State of Illinois through international trade and cultural understanding; and

WHEREAS, foreign languages substantially help to further the careers of Illinois citizens as a skill that is used in many employment environments; and

WHEREAS, foreign language skills help enhance understanding among the diverse ethnic and cultural groups of Illinois citizens; and

WHEREAS, to promote foreign language study, National Foreign Language Week will take place March 5-11, 2001, by foreign language teachers across the State of Illinois;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 5-11, 2001, as FOREIGN LANGUAGE WEEK in Illinois.

Issued by the Governor December 27, 2000.

Filed by the Secretary of State December 29, 2000.



Rules acted upon during the calendar year from Issue 01 through Issue 52 are listed in the Issues Index by Title number, Part number and Issue number. For example, 50 Ill. Adm. Code 2500 published in Issue 01 will be listed as 50-2500-01. The letter "R" designates a rule that is being repealed. Inquiries about the Issues Index may be directed to the Administrative Code Division of the Index Department, Office of the Secretary of State at 217-782-7017.

**PROPOSED**

89-152-01

8-290-02

32-315-01

35-506-02

77-510R-01

80-1540-01

86-130-01,02

89-152-01

**PEREMP-  
TORY****ADOPTED**

2-1101-02

11-1413-01

35-101R-02

35-101-02

35-102R-02

35-102-02

35-103R-02

35-103-02

35-104R-02

35-104-02

35-105R-02

35-105-02

35-107R-02

35-107-02

35-108-02

35-120R-02

35-125-02

35-130-02

35-211-01

35-217-01

35-742-02

71-50R-01

71-50-01

80-1650-01

83-1000-01

86-110-01

86-210-01

86-495-01

86-750-01

86-3000-01

**EMERG-  
ENCY**

20-1286-01

77-510R-01

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<input type="checkbox"/>	Sections Affected Indices to Illinois Register 1984-1989 Specify Year(s) _____	\$ 1 each

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Make Checks payable to: **Secretary of State**

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Springfield, IL 62756

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